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Sup. Ct.

VOL. I

# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 640

THE UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE, APPELLANTS

vs.

ALICE M. MORGAN, ADMINISTRATRIX OF THE ESTATE OF F. O. MORGAN, DECEASED, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED DECEMBER 21, 1940

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

A [Citation in usual form showing service on Frederick H. Wood and John B. Gage, filed June 25, 1940, omitted in printing.]

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1 In United States District Court for the Western Division of the Western District of Missouri

In Equity—No. 2328

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, PETITIONER

*vs.*

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE, DEFENDANTS

Petition—Filed July 19, 1933

*To the Honorable the Judges of the District Court of the United States for the Western Division of the Western District of Missouri:*

Your petitioner Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company, brings this petition in equity against the United States of America and the Secretary of Agriculture of the United States (hereinafter called the "Secretary") for the purpose of suspending, enjoining and annulling a certain purported order of said Secretary dated the 14th day of June 1933, in a proceeding pending before said Secretary entitled Secretary of Agriculture vs. L. B. Andrews, et al., Docket No. 311. For cause of action, petitioner alleges and shows:

I

Petitioner has its principal office and place of business in Kansas City, Missouri, in the Western Division of the Western Dis-
2 trict of Missouri, and is a citizen and resident of the State of Missouri, and a market agency registered with the Secretary of Agriculture of the United States under and pursuant to the provisions of the Packers & Stockyards Act, 1921 (42 Stat. L. 163) engaged in the business of selling or selling and buying livestock for others at the Kansas City Stock Yards located in Kansas City, Missouri, and in Kansas City, Kansas, posted by the Secretary of Agriculture as a public stock yard pursuant to the provisions of said Act.

II

The United States of America and the Secretary of Agriculture are made defendants in this action pursuant to the provisions of said Packers and Stockyards Act, 1921, the Commerce Court Act

(36 Stat. L. 539) approved June 18, 1910, and the District Court Jurisdiction Act, being a part of the Urgent Deficiency Appropriations Act (38 Stat. L. 219) approved October 22, 1913, and amendments thereof. The Secretary on the 7th day of April 1930, issued and caused to be delivered to this petitioner and the other respondents therein named a certain document described as an "Order of Inquiry and Notice of Hearing" entitled "Docket No. 311, Department of Agriculture." This Order and Notice advised this petitioner that an inquiry would be made by the Secretary under the provisions of Title III. of the Packers & Stockyards Act, 1921, into the reasonableness and lawfulness of the rates and charges of this petitioner and other respondents therein named (hereinafter referred to as respondents) for stockyard services rendered at the Kansas City Stock Yards, and that a hearing would be held before an Examiner designated by the Secretary in respect thereto in Kansas City, Missouri. A hearing was subsequently held before one John C. Brooke, purporting to act under and by the authority of the Secretary, and was concluded on February 10, 1931. On the 27th day of March 1931, oral arguments in respect to the evidence presented at the hearing were had before one R. W. Dunlap, purporting to be the "Acting Secretary of Agriculture," at Washington, D. C., and a brief was subsequently filed on behalf of this petitioner. On May 18, 1932, there was issued by the said R. W. Dunlap, purporting to be the then Secretary of Agriculture,

3 a certain document entitled "Bureau of Animal Industry, Docket No. 311, Proceedings, Findings of Fact, Conclusion and Order." This petitioner, on account of the abnormally low prices of livestock then obtaining, on the 11th day of May 1932, filed with the Secretary a Schedule of Rates and Charges for stockyard services rendered by it at the Kansas City Stock Yards, differing in structure and amounts of charges from the Schedule of Rates and Charges in effect at the time the aforesaid Order of Inquiry was made. Petitioner states that said Schedule of Rates and Charges so filed by the petitioner prior to the making of any of the aforesaid orders in said proceeding was not suspended by the Secretary pursuant to the provisions of the Packers and Stockyards Act, 1921, and is now in force and effect. The Schedule is set forth in Paragraph 84 of the Order. On May 26, 1932, this petitioner filed a Petition for Re-hearing and Re-investigation of the matters in said Notice of Inquiry referred to, which was granted by the Secretary on July 15, 1932. A re-hearing was had at Kansas City, Missouri, commencing on the 6th day of October 1932, and concluding on the 16th day of November 1932, before the said John C. Brooke, as Examiner. Thereafter, and on the 24th day of March 1933, an oral argument upon the evidence presented at said hearing was had before one Rexford G. Tugwell, then purporting to

be the Acting Secretary of Agriculture. Subsequently thereto a brief was filed on behalf of this petitioner. Thereafter, and upon the 14th day of June 1933, there was issued by the Secretary of Agriculture a certain document entitled "Bureau of Animal Industry, Docket No. 311, Proceedings, Findings of Fact, Conclusion and Order," (hereinafter referred to as the "Order") attached hereto, marked "Exhibit A," and made a part hereof, which said Order is by this action sought to be suspended, enjoined, set aside and annulled. Petitioner states that on the 5th day of July 1933, there was filed with the Secretary of Agriculture by the petitioner a Petition for Re-investigation and Re-hearing, a copy of which is attached hereto, made a part hereof, and marked "Exhibit B." The Secretary denied said re-hearing on July 6, 1933, and extended the effective date of the Order to July 24, 1933.

III

The Secretary in said Order finds and concludes that the Schedule of Rates and Charges of this petitioner now in ef-
4 fect contains rates and charges unjust, unreasonable and discriminatory, and said Order prescribes lower and different rates and charges for the specific stockyard services therein described as set out in Paragraph 80 of the Order. Such Schedule of Rates and Charges so set out in said paragraph is required to be filed in tariff form with the Secretary, and no amounts in excess of the rates and charges therein provided are to be collected thereafter by this petitioner for stockyard services rendered by it on and after the 24th day of July 1933. Petitioner states that failure to comply with the terms and conditions of said Order will subject this petitioner to heavy and severe fines and penalties as provided in said Packers and Stockyards Act, 1921, and in addition thereto, petitioner as a market agency may be subjected to numerous and vexatious suits for recovery of reparation by shippers of livestock to the market agency conducted by this petitioner at said Kansas City Stock Yards.

IV

Petitioner alleges that petitioner was denied and failed to receive, although duly demanded, a full hearing upon the matters and things set forth in said Order of Inquiry, or any of them, and that it has not been accorded the full hearing to which it is entitled under the provisions of the Packers and Stock Yards Act of 1921 and under the Fifth Amendment to the Constitution of the United States, and that by reason thereof the order of the Secretary of Agriculture made herein on June 14, 1933, is null and void as not being in compliance with said statute and would if enforced de-

prive petitioner of its liberty and property without due process of law; that petitioner has been deprived of the full hearing to which it is entitled as aforesaid, by reason of the following matters and things, as to each of which petitioner alleges that it constitutes in and of itself and together with any other or others thereof, a denial of the full hearing to which petitioner is entitled by virtue of said statute and the Fifth Amendment to the Constitution of the United States, and petitioner expressly demands that the defendants make separate and explicit answer to each of the matters and things hereinafter set forth, irrespective of whether or not it be alleged in a separate lettered paragraph:

5 (a) Henry A. Wallace, the Secretary of Agriculture, who made and signed the order of June 14, 1933, herein was not personally present when any of the testimony herein was taken and did not hear any of said testimony given, nor, on information and belief, was such testimony, or any of it, read to or by him, either the testimony offered by the petitioner or by the defendants.

(b) All of the testimony taken in the administrative proceeding herein was heard by John C. Brooke, an examiner of the Department of Agriculture. The petitioner offered the testimony of sixty-six witnesses. The respondents offered the testimony of forty-four witnesses. As to the testimony of each one of these witnesses, the petitioner alleged on information and belief that the Secretary neither heard it nor read it, nor had it read to him, nor read or examined any fair or adequate abstract, analysis or synopsis thereof.

(c) As to the testimony of each of the aforesaid witnesses, the petitioner alleges on information and belief that the Secretary did not examine or consider the same.

(d) As to the testimony of each of the aforesaid witnesses, the petitioner alleges on information and belief that the Secretary did not judicially appraise the same.

(e) In the course of the administrative hearings before Examiner Brooke, the petitioner introduced one hundred thirty exhibits and the respondents introduced three hundred eighty-six. Petitioner alleges on information and belief as to each of these exhibits that the Secretary did not read it, did not have it read to him, nor did he read any fair or adequate abstract, analysis or synopsis thereof.

(f) As to each of said exhibits petitioner alleges on information and belief that the Secretary did not examine or consider the same.

(g) As to each of said exhibits petitioner alleges on information and belief that the Secretary did not judicially appraise the same.

(h) At the conclusion of said administrative hearings before said examiner, petitioner demanded that the Secretary personally

hear oral argument on its behalf. The Secretary failed and refused to hear oral argument.

(i) On or about the 25th day of May 1933, petitioner submitted a brief on the law and facts involved in said admin-
6 istrative hearings with the demand that the Secretary read and consider the same. Petitioner alleges on information and belief that the Secretary failed and refused to read said brief.

(j) Petitioner further alleges on information and belief that the Secretary did not read any fair or adequate abstract, analysis or synopsis of said brief.

(k) Petitioner alleges on information and belief that the Secretary did not examine or consider said brief.

(l) Petitioner alleges on information and belief that the Secretary did not judicially appraise the arguments contained in said brief.

(m) At the conclusion of the administrative hearings before said examiner, petitioner demanded that a tentative report upon the evidence be prepared to which it might make exceptions prior to oral argument before the Secretary thereon. Petitioner's demand was refused and no tentative report was ever prepared.

(n) On information and belief, instead of personally considering the evidence and argument presented by petitioners and judicially appraising same, the said Secretary, without warrant or authority of law, delegated to one Rexford G. Tugwell, who purported to act in the premises as and in the place and stead of the Secretary of Agriculture, the powers and authority vested by law solely in the said Secretary, which powers and authority involved the exercise of legislative and judicial discretion and the determination of the issues with respect to the justice, reasonableness and lawfulness of the rates and charges of this petitioner. Said purported appointment of said Tugwell as Acting Secretary of Agriculture to act in the place and stead of the said Secretary was unauthorized and illegal by reason of the fact that from the time he began to act until June 14, 1933, when the order herein was made, the said Secretary of Agriculture was in Washington, D. C., at his office in the Department of Agriculture, and at no time during said period was either sick, absent, or disabled from any other cause, in the performance of the official duties of Secretary of Agriculture.

V

The conclusion contained in the Order as expressed in said Schedule of Rates and Charges are arbitrary, er-
7 roneous and do not constitute a statement of just, reasonable, and non-discriminatory rates and charges as required by said Packers and Stockyards Act, 1921, in that they are predi-

cated upon findings of fact set forth in said Order made without evidence and contrary to all the evidence presented at the hearings, hereinbefore referred to, in the following particulars:

(a) The statement (Paragraph 113) that the respondents in 1931 "in the face of almost universal lower levels in the United States were attempting to maintain their personnel and salaries thereof at levels obtaining in the more prosperous year 1929, and that this necessarily had a depressing effect upon the net moneys available to the owners of the respondent" market agencies, as shown by audits, is contrary to the testimony submitted by accountants for both the Government and the respondents. The amount claimed as an element of total costs representative of compensation to workers was less in the year 1931 than in the year 1929 by $403,208.38, or approximately 22% of the total compensation to workers in the year 1929. The selling and buying salaries for all respondents recognized by the Chief Accountant for the Government were less by $231,703.51 in 1931 than in 1929, or a reduction of approximately 30%. All of the evidence showed that the diminution in net moneys available to owners of the respondent market agencies in 1931, as compared with net moneys available to the owners of market agencies in 1929, was due to a reduction of approximately 13% in gross revenues, and by reason of the further fact that respondents were unable to reduce proportionately operating costs, such as rent, utility services, postage, taxes, and other fixed expenditures. Petitioner states that the gross revenue collected by all respondents as selling and buying charges in the year 1932 was less by 24.54% than in the year 1929; and for the first five months of the year 1933, was less by 18.96% than the revenue collected in the first five months of the year 1932. The reduction in 1933 was due to the combined effect of lower charges and the reduced volume of business handled.

(b) The Order (Paragraphs 142 and 143) holds that it is reasonable to expect a salesman of cattle and calves to sell efficiently 29,000 head of cattle a year, a salesman of hogs to
8 sell efficiently 85,000 head of hogs a year, and a salesman of sheep to sell efficiently 250,000 head of sheep a year. The Order states that each of the salesmen is presumed, in addition to the actual transaction of the sales, to perform all of the services incidental but necessary to the selling operation customarily performed by these salesmen. These services include the maintenance of contacts with the owners of livestock prior to shipment, appraisal in the country, supervision enroute to market either while on pasture, in feed lots, or at railroad feeding stations, keeping informed as to the changing market conditions, sorting and grading the livestock at the market, consulting with owners of livestock at the market, or advising them of the result of the

sales if away from the market together with such other duties as are usually performed by competent and efficient salesmen. This finding is in conflict with all of the credible and competent evidence in the record. The evidence shows that no salesman employed by any respondent during any year reached or attained such a standard of performance. The average number of head handled per salesman either in the year 1929 or 1931, or any other year, by this petitioner, or by any other of the 61 respondents mentioned in the proceeding, is shown by the evidence to have been less than the standard set forth by the Order and upon which the costs formulated by the Order are based and predicated.

The actual application of this formula in the year 1931 would have reduced the number of cattle salesmen actually employed in the sale of cattle and calves from 188 to 78.77 men. These salesmen would have been required to sell 2,284,207 head of cattle and calves, making 437,688 separate sales at the rate of 8.9 sales per man in each active selling hour. Each salesman would have realized in net proceeds to owners of cattle and calves $2,161.32 per hour instead of $905.55 per hour. The formula as to hogs reduces the number of hog salesmen actually engaged in 1931 from 50 men to 12.3 men. These men would be required to sell 1,045,048 hogs and to make 13.48 sales per hour, each realizing an average value of $121.94. The net proceeds of sales per actual selling hour for each salesman would be increased from $470.34, the amount actually returned to users of the service, to $1,913.23. The number of sheep salesmen would be reduced from 15 to 7.59 men. These salesmen would be required to sell 1,896,608 head of sheep in a year, making 9.05 sales per selling hour and
9 actually disposing 400.47 head per selling hour. The net proceeds of sales per salesman returned per hour would be increased from $1,080.02 to $2,134.51.

The evidence at the hearing showed that livestock salesmen, unlike ordinary salesmen, determine the price for the commodity they sell. The formulas set and standards determined are not only contrary to all the evidence before the Secretary, but the accomplishment of the results demanded would involve the complete destruction of the efficiency of the marketing operation, cause tremendous losses to the sellers of livestock, and establish an obstruction in the current of commerce in respect to livestock at the Kansas City Stock Yards of such nature as in and of itself to constitute a violation of the provisions of the Packers and Stockyards Act, 1921.

(e) The finding of the Secretary that the sum of $4,000.00 a year was a reasonable compensation for a cattle salesman, $3,000.00 a year for a hog salesman, and $3,500.00 a year for a sheep salesman, regardless of whether such salesman be an owner

or an employee, and irrespective of his relative ability, experience, energy, or the time devoted to his work or services incidental thereto, is not based upon any evidence in the record and is contrary to all of the testimony in the record, which was to the effect that the service value of such salesmen was unlike as a result of individual differences in experience, ability, personality, energy, and other characteristics, and that owner salesmen as a class were men of greater skill, ability, experience, and energy than employed salesmen. The finding is contrary to the testimony of all witnesses who gave evidence with respect to the amount of compensation to which owner-workers connected with this petitioner and other respondents were reasonably entitled for the services rendered by each of them. The Order, in finding that these witnesses were not particularly qualified to express opinions upon this subject, disregards all of the evidence in respect to the qualifications of such witnesses.

(d) The conclusion contained in said Order, to the effect that costs classified as "Business-getting and Maintaining Expenses" were unnecessary and excessive, was without evidence in support thereof and contrary to all of the evidence in the record. The costs so classified included amounts actually expended during the year 1931 by this petitioner and others of the respondents for traveling expenses incident to the appraisal of livestock before sale and supervising the feeding of livestock enroute to market at feeding stations, for advertising, for the preparation, printing, and posting of circulars and market reports sent to stockmen; for automobile maintenance and transportation in connection with the rendition of the stockyard services required of petitioner under the Act, and for dues and assessments paid to the Kansas City Live Stock Exchange, a voluntary Association, to which this petitioner belongs, for the support of the varied and essential activities of said Exchange. The Order erroneously treats all expenses classified by the Government accountants as "Business-getting and Maintaining expenses" as expenditures incident to procuring new business through the entertainment of prospective customers and advertising, whereas more than 80% of the expenses so classified by the accountants were in fact expenses incurred in the actual rendition of the stockyard services this respondent is required to render under the Act. The amount of expenses so classified and recognized by the Secretary and covered into the rates established would be insufficient to pay all traveling expenses actually incurred by this petitioner, would leave nothing for the payment of dues and assessments due to the Kansas City Live Stock Exchange, for the sending out of market circulars and market information to patrons, for any form

of advertising, or for the operation of automobiles, or for the entertainment of shippers. The undisputed testimony shows that during the period mentioned in the Order commission rates at Chicago and St. Louis, competitive markets, collected by market agencies at such markets were substantially higher than charges of this petitioner. Despite higher rates during said period, the percentage of livestock originating in the territory tributary to Kansas City marketed at Chicago and St. Louis increased in relative volume. Other undisputed evidence discloses the intensity of the competitive efforts of packers and others to divert livestock from the Kansas City market. The clear necessity is apparent for greater rather than reduced expenditure of time, effort, and money by this petitioner in getting and maintaining business. The effect of the Order, therefore, in eliminating expenditures for business-getting would be to increase rather than decrease unit operating costs of this petitioner.

11 VI

Petitioner states that the conclusions expressed in said Order and upon which the Schedule of Rates and Charges for stockyard services contained therein is based and predicated are arbitrary, inaccurate, and erroneous for the reason that relevant facts appearing from the undisputed evidence taken at the hearings were ignored in the Findings of Fact set forth in the Order in the following particulars:

(a) The evidence showed conclusively that the Schedule of Rates and Charges first placed under inquiry and higher in amount by more than 10% than the rates and charges found to be unjust and unreasonable by the Secretary, was established after hearing and investigation by the then Secretary as a just, reasonable, and nondiscriminatory Schedule of Rates and Charges under conditions much more favorable to petitioner from the standpoint of both gross and operating net income than the conditions existing in 1929 or subsequent thereto or which may be reasonably expected to exist during the period in which the Order may be effective. It was also shown that the rates and charges under inquiry expressed in percentage of net sales proceeds handled were less than 2% thereof and less on a sales percentage basis than the rates and charges in effect at the Kansas City Stock Yards by market agencies during the period of the greatest growth and development of the livestock market at Kansas City. Such rates were also shown to be less than the charges for commission or brokerage service for selling any other agricultural product, although livestock, due to its perishable nature and other characteristics, and variability in quality and price, involves a greater

expenditure of time, effort, and professional skill on the part of the selling agencies than any other of such compared agricultural commodities. The evidence showed that the value to the user of the service of increased efficiency in the selling service amounts to many times the total of all marketing costs. During the period of the World War and from 1913 to 1919, these rates were increased by only 10%, whereas increases occurred of approximately 200% in cost of living, farm wages, general hourly wages, livestock prices, packing costs, and meat retailing costs and transportation costs, and in brokerage and commission charges affecting other commodities, both agricultural and industrial. The Order in its Findings of Fact or Conclusions does not refer to or consider any of the above evidence, and is erroneous and prejudicial to petitioner in that it failed to give cognizance to the value of the services rendered in determining the amount of just and reasonable rates and charges.

(b) The Order, in Paragraph 129 thereof, states that the Packers and Stockyards Act, 1921, does not clothe the Secretary with authority to determine how many agencies would be required to handle business at the Kansas City Stock Yards properly, but fails to give consideration or weight to the undisputed testimony taken from the official records on file in the office of the Secretary of Agriculture disclosing that the Secretary since 1921 has registered as market agencies at the Kansas City Stock Yards, as competitors of this respondent, applicants for registration who have previously been expelled from membership in the Kansas City Live Stock Exchange for confessed misapplication and embezzlement of the proceeds of the sale of live stock, and has compelled, through court proceedings, the said Exchange and this respondent to extend to such registrants and to many other registrants all of the market facilities of said Exchange, including the use of the Clearing House, participation in the blanket fire insurance policy maintained by the Exchange, the hog dockage and inspection service, and other services operated by the Exchange.

(c) The Order failed also to give weight or consideration to the undisputed evidence showing that under rules and regulations of the Kansas City Live Stock Exchange, this respondent and other respondents adopted all reasonable means of promoting economies of operation and reducing expenditures incident to the getting and maintenance of business. The extent, amount, and nature of these restrictions upon the solicitation of business were shown by the evidence to have been previously recognized by the Secretary through participation in a Market Practice Agreement relating to the transaction of business by market agencies not affiliated

with said Exchange, including agencies organized on the co-operative plan.

(d) The Order predicates the conclusions therein reached upon a finding of fact that the demand for livestock at Kansas City, particularly for hogs, is greater than the supply
13 of livestock at the public market. It sets forth the increasingly large number of hogs received by packers direct at their plants through private stockyard operations during the period from 1921 to August, 1932, but fails to mention or give weight to other important and relevant evidence in the record. This evidence shows that such purchases of livestock as were made at private stockyards by such packers were consummated with the aid of and upon the basis of market prices determined on the date of purchase as to hogs at the Kansas City Stock Yards by and through the efforts of this and others of the respondents, and that the continuance of such private stockyard operation by said packers was dependent upon the existence of a public price-determining livestock market. This enabled these packers to acquire livestock without contributing proportionately to the cost of the maintenance of said public market. It was further shown that these packers pursued unfair competitive methods and practices in connection with acquiring receipts of livestock through said operations; and that the effect of this situation was not only to reduce the gross revenue of this respondent due to the diminution in volume of hogs and other livestock sold and bought, but also to increase the variability from day to day in amount of livestock marketed.

(e) Although the Order contains a finding of fact stating that livestock tends to move from producers to consumers by the most economical route, it fails to mention or refer to the other relevant and undisputed testimony in the record showing that in the early part of the year 1932 the railroads centering at Kansas City established freight rate differentials and market privileges favoring the use of railroad stockyards in the vicinity of Kansas City, Missouri, amounting to many times the total marketing costs on livestock handled at the Kansas City Stock Yards, and that such freight rate differentials have diverted livestock from the Kansas City Stock Yards, and will in the future tend to limit and reduce the volume of livestock sold or handled by this petitioner unless such differentials are abrogated by action of the Interstate Commerce Commission now being sought through a proceeding brought by the Kansas City Live Stock Exchange.

(f) The Order failed to give weight or consideration to the undisputed evidence disclosing operating conditions at
14 Kansas City creating higher market agency operating costs than others of the five leading competitive markets

referred to in said Order and which were shown to have higher rates and charges in force and effect than those under inquiry or described as reasonable by said Order. The evidence showed a greater variability in the volume of receipts from day to day of livestock at Kansas City, greater diversity in grades of livestock received, delivery of trucked-in livestock to market agencies at unloading chutes instead of at pens assigned to agencies as at other markets, a greater area from which receipts are drawn, a larger proportion of stocker and feeder cattle handled, necessitating double contracts with sellers in the West and Southwestern portions of the country and buyers in the Central and Eastern portions of the United States, all of which increased the expenditure of effort and money necessary in connection with the efficient operation of the business of this petitioner and other respondents as compared with conditions existing upon other markets. The evidence showed that peak receipts by month or week in Kansas City were equal in volume as to cattle and calves to the peak receipts by month or week in Chicago although the average volume at Kansas City was only 50% of the average volume for the year in Chicago. The Order ignored the effect of variability of volume in creating stand-by expense and increasing unit operating costs.

## VII

Petitioner states the Order is based on erroneous conceptions of established rules of law and, therefore, the rates and charges provided therein are unlawful and void for the following reasons:

(a) The "functional unit costs" allegedly reasonable set forth in said Order in no instance have a counterpart in the actual experience of any one of the sixty-one respondents named in said proceeding. These theoretical unit costs fixed by the Order when applied to the 1931 volume of all respondents, including this petitioner, save the two co-operatively organized market agencies, produce an aggregate supposititious handling cost, including return on investment, which is $607,321.32 less than the aggregate costs found to exist in the actual operation of the business by the petitioner's accountant, and $422,071.95 less than the
15 aggregate costs and expenses recognized by the Government's Chief Accountant to have been encountered by these agencies in the actual rendition of stockyard services. The costs and expenses recognized by the Government's accountant (R. Exhibit 115) include no expenses incident to bad debts, refused purchases, interest paid, errors in accounting, donations to Community Chests, or reserve to meet uninsurable hazards, and no allowance for profits. After these eliminations, the costs recognized by Government accountants are as to all the respondents in the pro-

ceeding, including the two co-operatively organized agencies, $459,200.73 in excess of the total cost fixed as reasonable by the Order. The complete lack of comparability between the unit functional costs and the total costs expressed in the Order and shown in evidence as applied to the fifty-nine respondents except the two co-operatives, is demonstrated and shown on the statement herewith filed, made a part hereof, and marked "Exhibit C."

The separation of so-called species costs into functional costs, as for selling, yarding, office work, administration, business-getting, etc., was wholly arbitrary and not based on any natural segregations incident to the actual performance of these functions inasmuch as the same personnel and the same facilities were used very largely to perform all of these functions by petitioner and other respondents. These arbitrary bases of apportionment varied widely from the facts and were based wholly upon the judgment of the person who accomplished the segregation. The testimony of all accountants was to the effect that while aggregate operating costs could be stated with a fair degree of accuracy, functional costs were erroneous to the extent that the arbitrary and hypothetical bases of apportionment or segregation were unsound. The cost finding process in the Order then proceeds to eliminate from these disintegrated or functional costs the portions thereof represented by salesmen's and buyers' compensation and business-getting and maintaining costs, and to substitute therefor arbitrary amounts representing but a small fraction of amounts eliminated. These disintegrated functional costs are then reintegrated on purely an arbitrary or judgment basis. The process employed served to bring about a magnification of errors inherent in the original functional cost separation. The reintegration process ignored
16 the practical situation confronting this petitioner and other market agencies in that such agencies are compelled to operate as independent units handling all species in all kinds and sizes of consignments. The selling costs are found to be unusually low in the case of agencies that have relatively high unit costs in respect to those expenses classified as business-getting and maintaining expenses. These functional costs were considered separately in the rate-making process used in the Order and, therefore, the connection between low selling costs and relatively high business-getting costs in some agencies was lost sight of and received no consideration in the formulation of total costs. Under this procedure, hypothesis rests upon hypothesis and conjecture is piled upon conjecture, to the end that the final result reached bears no resemblance whatever to the facts of the situation as shown by the evidence to exist. Neither the agencies handling average volume, nor any other agency, or class of agencies, including this petitioner,

find their functional costs as set out within the range of the total unit cost denominated as reasonable by the Order. The result is an Order, as hereinafter stated, confiscatory of the property and livelihood of this petitioner, and evidences an erroneous conception and application of established rules of law and a complete disregard of all the cardinal principles of sound accounting and cost finding.

(b) The Order purports to allow, in Paragraphs 159 to 163, inclusive, reasonable costs per head to cover compensation for management. Said costs as allowed are, in fact, unjust, unreasonable, non-compensatory, and non-reimbursible of expenses in good faith incurred by petitioner in that the bases stated for the calculation therefor in Paragraph 159 is the ascertained cost of management of the two co-operative respondent market agencies. Under all the evidence, the costs sustained by such agencies are not comparable with the necessary costs incident to the management of this petitioner's business by reason of the fact that the amount so stated applies to conditions and expenses of management dissimilar and noncomparable with those confronting this petitioner and all others of the respondents except said two co-operatively organized concerns. This evidence shows that such co-operative associations are managed by their several Boards of Directors, no allowance
17 for whose time and expenditures is included in the amount set out as the basic in said Order, and receive in addition assistance from public employes in connection with matters affecting management, including employes of the Department of Agriculture, both in and out of Washington, D. C., the expense of which is not included in the amount stated or estimated by said Order. The statement contained in Paragraph 159 of said Order, to the effect that reasonable rates "should provide also a per head profit, that is, compensation for management and the carrying of uninsurable risks," is based upon an erroneous conception of law in that fair compensation for management and expenses incident to carrying uninsurable risks does not constitute profit, but constitutes, and is, expense. The Order in purporting to allow in the ascertainment of per head costs, for reasonable profits or margin of profits in respect to selling or buying each species of livestock, yet failing so to do, is inconsistent and erroneous.

(c) The Order erroneously failed to allow as an element and part of the capital of this petitioner and upon which a return is allowed by said Order, any amount representative of going concern value as shown to exist by the evidence taken at the hearing. The Order holds that a rate of return of 6% on fixed capital and 7% on working capital used by petitioner was reasonable and allows that amount only in calculating the gross return recognized by the

Order and covered into the rates and charges established. The total return on invested capital for fifty-nine of the respondents, except co-operatives, amounts to $49,164.88, whereas this petitioner and other respondents, in accordance with their respective use and employment of capital, were lawfully entitled to a return thereon of not less than $59,719.21. The Order is in conflict with the uncontradicted testimony of many witnesses, including experienced bankers and others familiar with financing market agency operation, to the effect that interest rates in excess of 8% per annum were reasonable and necessary in order to induce the investment of capital in the maintenance of the business of market agencies under the conditions existing in 1931 at the Kansas City Stock Yards.

(d) The Order erroneously fails to allow, as an element of
18 the reasonable cost of operations of this petitioner and other respondents, expenses incident to obtaining insurance against normal risks and hazards encountered in the business, including insurance partially indemnifying the respondents against loss by reason of the liability imposed on respondents on account of the guaranty of title undertaken by respondents upon the sale and disposition of livestock. As to the fifty-nine respondents, except co-operatives, engaged in selling operations, the Order fails to recognize costs in this category aggregating $19,918.63 found to exist by the Government accountants and $11,245.60 found to exist by respondents' accountant.

(e) The Order, in disallowing as elements of reasonable cost and failing to cover into the rates and charges prescribed traveling expenses, dues and assessments necessary to the support of the Kansas City Live Stock Exchange, advertising expense, losses inevitably incident to errors in accounting processes, losses incident to insurable and uninsurable hazards, moneys expended for donations to the Community Chests maintained by the Chambers of Commerce in Kansas City, Missouri, and Kansas City, Kansas, losses incident to bank failures affecting the collection of items or remission of proceeds, amounts actually expended in the employment of salesmen necessary to efficiently handle and transact the stockyard services rendered, invades the right and authority of this petitioner to manage and conduct its own business inasmuch as all of such expenditures were actually made in good faith in the sound exercise of the best business judgment of petitioner developed as a result of practical experience of many years in the operation of a market agency at the Kansas City Stock Yards.

(f) The effect of the Schedule of Rates and Charges is to permit increases in rates to "dealers" registered under the Packers and Stockyards Act, 1921, and to permit increases in the rates and

charges for buying livestock. Such rates are shown by all the evidence in the record to apply to stockyard services, the relative cost of which as compared with selling service does not justify such increases and the increases allowed are not collectible or realizable by this petitioner in the actual and practical conduct of its business.

The effect of said Order is to increase buying rates to an
19 extent approximately 40% in excess of the rates and charges for similar buying services of market agencies at Chicago, and establish as reasonable rates aproximately 40% less than the rates for selling services at Chicago. An increase is permitted of approximately 40% in the present rates and charges for selling services rendered for "dealers." The rates so stated representing increases are merely "paper" rates and are not predicated on any fair consideration of the record or upon any cost accounting developed by the Order or evidence. An application of such rates to business handled by petitioner under existing circumstances would be impossible without petitioner encountering greater loss than gain. In the calculations contained in this petition as to the yield of the rates prescribed, these increases are not included. In such respects the said Order represents an unwarranted, injudicious, and prejudicial attempt, without evidence, to readjust rates. The buying and dealers' rates so established are discriminatory and prejudicial, and if put in effect would create an obstruction to the flow of livestock in commerce at said stock yards in violation of the Packers and Stockyards Act, 1921.

## VIII

The Schedule of Rates and Charges prescribed by the Order is confiscatory as to this petitioner and takes the property of petitioner without due process of law in violation of the Fifth Amendment of the Constitution of the United States in that:

(a) The gross revenue which would have been received by petitioner in the year 1931 if said Schedule of Rates and Charges had been in force and effect would have amounted to $4,623.96 less than the total calculable costs incurred by petitioner in the rendition of stockyard services (R. Exhibit 207), and in that amount and to that extent the enforcement of the Order would wrongfully and unlawfully confiscate the property of this petitioner.

The confiscatory effect of the Schedule of Rates and Charges prescribed if presently applied to the business of petitioner would be further enhanced by reason of reduction in the gross revenue of petitioner due to diminution in volume of business handled. The gross yield to petitioner of the rates and charges collected was less in 1932 by 70% than the revenues received in 1931,
20 and for the first five months of 1933 less by 5% than during

the first five months of 1932. As applied to business of petitioner, the said Schedule of Rates and Charges would cause a further reduction in revenue in respect to cattle and calves of not less than —%, in respect to hogs of not less than —%, and in respect to sheep of not less than 13.59%.

(b) The gross yield of the rates and charges prescribed if applied in 1931 would have been less in amount than the total costs of operation of petitioner's business recognized by the Government's Chief Accountant in the Cost Study introduced in evidence (R. Exhibit 115).

The confiscatory character of the Order is further disclosed by the fact that as to twenty out of the sixty-one respondents on the basis of the Government's own costs shown in evidence, which are referred to without prejudice, an operating deficit would be incurred, exclusive of any compensation whatsoever to owners for personal services rendered and any return on capital invested. As to hogs, thirty-nine of the respondents would sustain an operating deficit on the same basis, exclusive of any compensation to owners and return on capital. After allowing the inadequate return on capital provided by the Order, twenty-four of the respondents would sustain a net operating deficit on the basis of the Government's own showing and exclusive of any compensation to owners for personal services rendered. The amount remaining to provide compensation for the personal services of the 136 owners of respondents would provide an average annual total compensation per man of $174.50, or 48¢ per day. On the same basis the total compensation for the personal services rendered by the owners of petitioner would amount to $542.92, whereas the reasonable value thereof as shown by the evidence was $4,000.00, for one owner.

(c) The rates and charges ordered into effect are individually and severally confiscatory as applied separately to calves, yearling cattle, cattle, hogs, and sheep, and each and all of said rates will fail to yield to this petitioner a fair and compensatory return for the stockyard services rendered by petitioner or a return commensurate with the value of the service rendered, and will not be reimbursible to the petitioner of the actual operating expenses necessarily incurred in the rendition of such services.

21 (d) The Order bases the rates and charges formulated upon the stated assumption that the respondents doing the largest relative volume of business operated their businesses more economically and efficiently than others of the respondents doing a lesser volume of business. On page 39, said Order refers to eleven agencies as having handled more than 50% of the total market volume of livestock at the Kansas City Stock Yards in 1931. The Schedule of Rates and Charges found reasonable by

said Order on the basis of costs found to exist by the Government accountants and exclusive of any compensation whatsoever for the personal services rendered by the owners of said respondents, would have lacked $20,670.28 of meeting the inadequate allowance for return on capital investment provided for in the Order. The Order (page 23) mentions the fact that twenty-three agencies, inclusive of the eleven above referred to, handled more than 75% of the market volume as measured by equivalent carlots. The owners of these twenty-three respondents would have received under said rates on the Government's own showing (Exhibit 115) no compensation whatsoever for personal services rendered and a return on capital invested amounting to only 60% of the inadequate return allowed by the Order.

(e) The net operating loss sustained upon the basis of the Government's own cost showing by the two cooperatively organized agencies would have been respectively $22,782.76 and $14,346.02.

## IX

The Secretary erroneously and improperly overruled and denied the Petition for Reinvestigation and Rehearing (Exhibit B) filed herewith and made a part hereof. Petitioner states that in and by said Petition for Reinvestigation and Rehearing the Secretary was advised that economic changes affecting petitioner of radical and far-reaching character and effect had occurred since the taking of evidence at the hearings hereinbefore referred to and prior to June 14, 1933, the date of said Order, rendering the evidence so taken incomplete, inadequate, and misleading as an expression of present or future conditions as to revenues, costs, or volume handled by this petitioner. Petitioner reasserts as grounds for the relief sought in the petition all of the allegations contained in said Petition for Reinvestigation and Rehearing, to the same effect as if fully set out in this petition.

22

Your petitioner states that the failure on the part of the petitioner to comply with such purported Order of the Secretary may subject petitioner to prosecution and liability for penalties in large amounts as against which liability your petitioner will have no adequate protection at law and may subject it to multifarious and vexatious suits for reparation on the part of various shippers of livestock. Should your petitioner attempt to avoid liability for penalties under duress and publish and establish the rates specified in the Order of said Secretary, petitioner will be required by law to collect such rates, which in many instances will result in reductions in the revenues of your petitioner, and if later on it should be determined that said Order of the Secretary is null and void

your petitioner would be without means of collecting the difference between said rates prescribed by said Secretary and the present rates without multifarious suits and actions at law, impractical in character, against those shippers to whom such reductions apply. Your petitioner will, therefore, unless the said purported Order is suspended, enjoined, set aside, and annulled, and if pending final determination whether or not its enforcement is not temporarily stayed and suspended, suffer irreparable injury, for which it would be without adequate remedy or protection at law.

Wherefore, petitioner prays:

(1) That a writ of subpoena issue immediately out of and under the seal of this Court, and be directed to said defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this Court and to answer this bill, but not under oath, answer under oath being hereby expressly waived;

(2) That this Court direct that due and proper notice of this petition and proceeding issue and be served forthwith, as prescribed in said Act of October 22, 1913 (28 U. S. C. A., Secs. 41 (28) and 43 to 48, inclusive);

(3) That a court constituted as required by said Act of October 22, 1913 (28 U. S. C. A., Sec. 47) be convened and
23 that said court so constituted and convened shall hear this petition upon due and legal notice to defendants;

(4) That upon the filing of this bill, the Judge of this Court shall call to his assistance two other Judges, one of whom shall be a Circuit Judge, and that upon three days' notice to defendants, this Court shall enter its order staying and suspending the enforcement, operation, or execution of said Order of said Secretary, and each and every part thereof, for sixty days from the date of said Order; and that after five days' notice of the time and place of hearing having been given to defendants, petitioner herein be granted a temporary injunction restraining the Secretary of Agriculture and the United States from enforcement of said Order of June 14, 1933;

(5) That this Court, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside, and annulling said Order of said Secretary;

(6) That petitioner have and recover of the defendants the proper costs of this suit; and

(7) That the petitioner have such other and further general relief in the premises as may to the Court be deemed just and equitable.

JOHN B. GAGE,
*Solicitor for Petitioner.*

[*Duly sworn to by John B. Gage; jurat omitted in printing.*]

*Exhibit A to petition*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

*Proceedings, findings of fact, conclusion, and order*

Bureau of Animal Industry Docket No. 311

Secretary of Agriculture

*vs.*

L. B. Andrews, Doing Business as L. B. Andrews Livestock Commission Company; A. B. Bachman, Doing Business
24 as A. B. Bachman Livestock Commission Company; W. N. Baucus and Ira Kimmons, a Partnership Doing Business as Baucus & Company; Charles N. Bird; Charles E. Blount, Doing Business as Charles E. Blount & Company; Frank Boddington, Doing Business as Frank Boddington Livestock Commission Company; Bowles Livestock Commission Company; Burlington Livestock Commission Company; Henry F. Carnes, Doing Business as Henry F. Carnes Livestock Commission Company; Cassidy Southwestern Commission Company; John Clay, F. H. Connor, C. A. Klemen, and J. G. Forrest, a Partnership Doing Business as John Clay & Company; Crider Brothers Commission Company; Warren Cummings, Doing Business as Warren Cummings Livestock Commission Company; W. E. Curtis, Doing Business as W. E. Curtis & Company; Charles Dixon Commission Company; E. R. Corrigan and Karl N. Soeder, a Partnership Doing Business as Corrigan & Soeder; Drumm Standish Commission Company; Ehrke-Martin Livestock Commission Company; E. W. Elliott and R. K. Swain, a Partnership Doing Business as Elliott, Swain & Company; Farmers Union Livestock Commission; Farrar, Davis & Campbell Livestock Commission Company; Link Fasken, Doing Business as Link Fasken Commission Company; Gillespie & Jones Livestock Commission Company; W. G. Gladish, Doing Business as Gladish Livestock Commission Company; T. W. Goodson, G. E. Goodson, and O. C. Green, a Partnership Doing Business as Goodson-Green Company; Norman B. Greer, Doing Business as Greer & Company; O. C. Haggart, John H. Wilson, and Glenn Haggart, a Partnership Doing Business as Haggart, Wilson Livestock Commission Company; W. F. Humphrey, Doing Business as W. F. Humphrey & Company; Inman-Hutton Livestock Commission Company; W. E. Burrus,

Doing Business as Interstate Livestock Commission Company; J. G. Jackson; Jefferson-Lowry-Davis Commission Company; W. M. Liggett and Roy K. Sanson, a Partnership Doing Business as Kansas City Livestock Commission Company; Harry Kennaley, Doing Business as Harry Kennaley Commission Company; W. C. Kile, Doing Business as W. C. Kile Livestock Commission Company;

H. H. Klecker, Doing Business as Hinie Klecker Sheep
25 Commission Company; E. L. Knight and E. Tice, a Partnership Doing Business as Knight & Tice Sheep Commission Company; Harmon C. Knighton, Doing Business as Ham Knighton Commission Company; S. Kraus; J. M. Laird, G. T. Laird, and H. E. Laird, a Partnership Doing Business as Laird Bros. Livestock Commission Company; Walter G. Land, Doing Business as Walter G. Land Livestock Commission Company; W. M. Leitch Sheep Commission Company; L. Levy; R. H. Lewis and S. H. Flournoy, a Partnership Doing Business as Lewis-Flournoy Livestock Commission Company; A. E. Long and Robert B. Perry, a Partnership Doing Business as Long-Perry Livestock Commission Company; Martin Bros. & Lee Livestock Commission Company; A. J. Maurer; Grover C. Maxwell, Doing Business as Grover C. Maxwell Commission Company; H. B. Dorsett, Doing Business as M. K. & T. Commission Company; T. S. Moffett, H. M. Baker, and J. M. McLain, a Partnership Doing Business as Moffett Livestock Commission Company; Fred O. Morgan, Doing Business as Fred O. Morgan Commission Company; Jay D. McCormick, Doing Business as Jay D. McCormick Livestock Commission Company; McDonald Livestock Commission Company; Roy W. Nance, Doing Business as Roy W. Nance Livestock Commission Company; National Livestock Commission Company of Kansas City; John M. Nichols, Doing Business as John M. Nichols Livestock Commission Company; E. E. Sutton, Doing Business as O. K. Cattle Company; W. O. Park; W. H. Peed, Doing Business as W. H. Peed Livestock Commission Company; K. L. Peterson and W. F. Humphrey, a Partnership Doing Business as K. L. Peterson & Company; Bryant Poole, D. L. Dempsey, and James Rutherford, a Partnership Doing Business as Poole-Dempsey-Rutherford Livestock Commission Company; Producers Commission Association; J. M. Ragland, W. B. Storts, and W. L. Burrus, a Partnership Doing Business as Ragland, Storts & Burrus; M. W. Rice and George E. Kirk, a Partnership Doing Business as Rice & Kirk; George P. Robinson and Joe R. Hoover, a Partnership Doing Business as Robinson-Hoover Commission Company; F. W. Banks and C. A. Rountree, a Partnership Doing Business as Rountree-Banks; Ryan-Robinson Commission Company;

Fern O. Sanders, Doing Business as Fern O. Sanders
26 Livestock Commission Company; William M. Schwartz, Joseph M. Nolan, and Laurence Feaman, Jr., a Partnership Doing Business as Schwartz-Feaman-Nolan Company; E. F. Searls, Doing Business as George W. Searls & Son; The Stagner, Pieronnet & Willis Livestock Commission Company; B. C. Stanley, Doing Business as Stanley Commission Company; C. A. Stuart, Doing Business as C. A. Stuart & Company; Swift & Henry Livestock Commission Company; George S. Tamblyn, Doing Business as Tamblyn Commission Company; L. Knop, Henry F. Thies, E. J. Thies, F. W. Thies, and A. C. Thies, a Partnership Doing Business as H. Thies & Sons; Ben L. Welch, Doing Business as Welch Livestock Commission Company; Dan Wester, R. W. Wester, and Joseph Smith, a Partnership Doing Business as Wester Bros. & Smith Commission Company; J. Less White, Doing Business as Less White Livestock Commission Company; Wilson, Egan & Company; Witherspoon Livestock Commission Company; Curtis A. Wood; W. E. Woodford, Doing Business as W. E. Woodford Livestock Commission Company; Ralph W. Wright; Ralph W. Wright and Wm. N. Baucus, Partners, Doing Business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson and Chas. G. Smith, Partners, Doing Business as John Clay and Company; L. E. Tice, Doing Business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, Partners, Doing Business as Laird Bros. Livestock Commission Company; Walter G. Land and John E. Maze, Partners, Doing Business as Walter G. Land Livestock Commission Company; Charles F. Vieregg and Robert H. Stover, Partners, Doing Business as W. M. Leitch Sheep Commission Company; H. E. Long, Robert B. Perry, and B. W. Perry, Partners, Doing Business as Long-Perry Livestock Commission Company; Martin, Blomquist & Lee Commission Company, a Corporation; Grover C. Maxwell and Ben J. Furnish, Partners, Doing Business as Maxwell & Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz and Louize McGrew Moffett, a Partnership, Doing Business as the Moffett Livestock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, Partners, Doing Business as the Ragland, Storts
27 and Burrus Livestock Commission Company; Laurence Feaman and J. M. Nolan, Partners, Doing Business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a Corporation; J. Less White and O. C. Seamans, a Partnership, Doing Business as the Less White & Seamans Livestock Commission Company; R. W. Wester and Joseph P. Smith, Partners,

Doing Business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, Partners, Doing Business as Graybill and Stephenson; Great Western Order Buying Company, a Corporation; Dave Hamer, Doing Business as Dave Hamer Livestock Commission Company; and Harry Conley, W. H. Cripe and J. Ed Freed, Respondents.

## Proceedings

1. This is a proceeding under Title III of the Packers and Stockyards Act, 1921, instituted by the Secretary of Agriculture according to his order of April 7, 1930. By this order of inquiry and notice of hearing the Secretary of Agriculture directed that an inquiry be made into the reasonableness and lawfulness of all rates and charges provided in the tariffs of the respondent market agencies at the Kansas City Stockyard, Kansas City, Missouri.

2. Said order of inquiry and notice alleged that the respondents were registered and doing business under the Packers and Stockyards Act, 1921, as market agencies engaged in the business of buying and/or selling livestock on a commission basis at the Kansas City Stockyard in Kansas City, Missouri, which has been found by the Secretary of Agriculture to be a "stockyard" as that term is defined in Title III of the Act and posted as such; that in accordance with the requirements of said Act respondents had theretofore filed, published, and put into effect a schedule of rates and charges for their services as market agencies as set forth in their tariffs and supplements thereto; that the interest of shippers, producers of livestock who patronize respondent agencies and the public generally require that inquiry be instituted under Title III of the Act for the purpose of determining the reasonableness and lawfulness of the rates and charges of all respondents named therein as set forth in their tariffs and supplements thereto.

28 3. Notice of such hearing was given to the respondents by serving upon them a copy of said order and notice. Pursuant to this order and notice a hearing was held at Kansas City, Missouri; before an examiner designated by the Secretary of Agriculture and said hearing began on December 3, 1930, and concluded on February 10, 1931. The respondents who were members of the Kansas City Livestock Exchange were present by counsel throughout the hearing. The following respondents were not present by counsel: The Farmers Union Livestock Commission and the Producers Commission Association, whose respective managers entered their appearance at the hearing; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership doing busi-

ness as Goodson-Green Company who were succeeded by O. C. Green and Robert Coble, a partnership doing business as Goodson-Green Company; J. G. Jackson, W. O. Park; E. F. Searls doing business as Geo. W. Searls and Son; and, Curtis A. Wood. The following respondents had ceased to do business on the Kansas City market at the time the hearing commenced: A. B. Bachman, doing business as A. B. Bachman Livestock Commission Company; Charles N. Bird; S. Kraus; L. Levy; H. B. Dorsett doing business as M. K. and T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Livestock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; F. W. Banks and C. A. Rountree, a partnership doing business as Rountree-Banks; and W. E. Woodford, doing business as W. E. Woodford Livestock Commission Company. Certain changes in the organization of the respondents had taken place as follows: Charles E. Blount, doing business as Charles E. Blount and Company, was succeeded by Charles E. Blount and Earnest E. Skaggs, doing business as Blount-Skaggs Company; John Clay, F. H. Conner, C. A. Klemen and J. G. Forrest, a partnership doing business as John Clay and Company, succeeded by John Clay, F. H. Conner, A. F. Wilson and C. G. Smith, a partnership doing business as John Clay and Company; W. M. Liggett and Roy K. Sanson, a partnership doing business as Kansas City Livestock Commission Company, succeeded by W. M. Liggett, doing business as the Kansas City Livestock Commission Company; E. L. Knight and Lawrence E. Tice, a partnership doing business as Knight and Tice Sheep Commission Company,
29 succeeded by Lawrence E. Tice, doing business as Knight and Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership doing business as Laird Brothers Livestock Commission Company, succeeded by J. M. Laird, and G. T. Laird, a partnership doing business as Laird Brothers Livestock Commission Company; W. M. Leitch Sheep Commission Company, succeeded by Charles F. Vieregg and Robert H. Stover, a partnership doing business as the W. M. Leitch Sheep Commission Company; A. E. Long, and Robert B. Perry, a partnership doing business as Long-Perry Livestock Commission Company, succeeded by A. E. Long, Robert B. Perry, and B. A. Perry, a partnership doing business as Long-Perry Livestock Commission Company; K. L. Peterson and W. F. Humphrey, a partnership doing business as K. L. Peterson and Company, succeeded by K. L. Peterson, doing business as K. L. Peterson and Company. Counsel for respondent market agencies who are members of the Kansas City Livestock Exchange entered appearances for these firms whose organization had been changed.

4. Oral argument was had before the Acting Secretary of Agriculture on March 27, 1931, and respondents' counsel submitted a brief on behalf of the members of the Exchange.

5. On May 18, 1932, the Acting Secretary of Agriculture issued an order directing that on and after thirty (30) days from the date of the order the respondent market agencies and each of them cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges then on file with the Secretary of Agriculture; that on and after said thirty days neither the respondent market agencies nor any of them should publish, demand or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge deemed in said order to be just, reasonable, and nondiscriminatory for the furnishing of such service; that at least ten days prior to the date on which said order would become effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Kansas City Stockyard, Kansas City, Missouri, and all rules and regulations changing, affecting, or determining such rates or charges, and that no rate or charge so shown for any such stockyard services be in excess of the rate or charge determined by said order to be just, reasonable, and nondiscriminatory for such service. The effective date of the order was thereafter extended to July 18, 1932.

6. On May 26, 1932, many of the respondents filed petitions alleging in detail the general economic changes which had developed in the United States since the year 1929, that being the year of the specific financial experience of respondents which the Secretary had used in the determination of the reasonableness of respondents' rates, and further alleging in detail the particular effect upon the business of such market agency of said general changes, especially with respect to the volume of business handled by each of such market agencies. Each of the petitions prayed that the order of the Acting Secretary of Agriculture, dated May 18, 1932, be withdrawn and that this proceeding be reopened for reinvestigation of the matters and things referred to in the order of inquiry and be set down for further hearing upon the subjects set forth in the aforesaid petitions.

7. On May 11, 1932, and prior to the issuance of the order of May 18, 1932, and the filing of said petitions, each and every of the petitioning market agencies filed with the Secretary to be-

come effective May 23, 1932, a schedule showing either expressly or by reference all rates and charges for the stockyard services furnished by such market agencies at the Kansas City Stockyard, Kansas City, Missouri, each of which schedules has for convenience been designated "Kansas City Livestock Exchange Tariff No. 3", and has been in force and effect since said 23rd day of May 1932.

8. In view of the decision of the Supreme Court of the United States in the case of Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248, and of the District Court of the United States for the Western District of Missouri in the case of St. Joseph Stockyards Company v. the United States 58 Fed. (2d) 290, the Secretary was of the opinion that it was his duty under the law to reopen this docket and hold a rehearing to the end that all parties in interest might be given opportunity
31 to present such evidence of changes both general and particular as have occurred since the year 1929 and are material to the issues raised by the Order of Inquiry herein, and also to the end that all parties might have opportunity to present such other things as might be material to said issues; and further to the end that a general inquiry might be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in said new schedules known as Kansas City Livestock Exchange Tariff No. 3 and in the new schedules filed by the Farmers Union Live Stock Commission and the Producers Commission Association, respectively, on June 10, 1932, as aforesaid, and in any and all schedules of market agencies in effect at said Kansas City Stockyard at the time of the rehearing ordered by the Secretary. Accordingly, the Secretary, by an order dated July 15, 1932, vacated the aforesaid order of May 18, 1932, and directed a rehearing for the purposes aforesaid.

9. The rehearing ordered as above stated was held at the Kansas City Athletic Club Building in Kansas City, Missouri, by adjournment from the Federal Building in said city. The hearing began on the 6th day of October and was concluded on November 16, 1932.

10. By the order of July 15, 1932, granting a rehearing herein, the following additional parties were made respondents in the cause, namely: Ralph W. Wright and Wm. N. Baucus, partners doing business as Wright and Baucus Live Stock Commission Company; John Clay, F. H. Connor, Alan F. Wilson and Chas. G. Smith, partners, doing business as John Clay and Company; L. E. Tice, doing business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, partners doing business as Laird Bros. Live Stock Commission Company; Walter G. Land

and John E. Maze, partners doing business as Walter G. Land Live Stock Commission Company; Charles F. Vieregg and Robert H. Stover, partners doing business as W. M. Leitch Sheep Commission Company; H. E. Long, Robert B. Perry and B. W. Perry, partners doing business as Long-Perry Live Stock Commission Company; Martin, Blomquist & Lee Commission Company, a corporation; Grover C. Maxwell and Ben J. Furnish, partners doing business as Maxwell & Furnish Livestock Commission Company;
32 H. M. Baker, W. C. Bradshaw, Barney Metz, and Louize McGrew Moffett, a partnership doing business as the Moffett Live Stock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, partners doing business as the Ragland, Storts and Burrus Live Stock Commission Company; Laurence Feaman and J. M. Nolan, partners doing business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a corporation; J. Less White and O. C. Seamans, a partnership, doing business as the Less White & Seamans Live Stock Commission Company; R. W. Wester and Joseph P. Smith, partners, doing business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, partners, doing business as Graybill and Stephenson; Great Western Order Buying Company, a corporation; Dave Hamer, doing business as Dave Hamer Live Stock Commission Company; Harry Conley, W. H. Cripe, and J. Ed Freed.

11. At the time of the rehearing in this cause above described, the following respondents were not engaged in business at the Kansas City Stockyard; L. B. Andrews, doing business as L. B. Andrews Live Stock Commission Company; A. B. Bachman, doing business as A. B. Bachman Live Stock Commission Company; Charles N. Bird; Charles E. Blount, doing business as Charles E. Blount & Company; Gillespie & Jones Live Stock Commission Company; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership doing business as Goodson-Green Company; W. E. Burrus, doing business as Interstate Live Stock Commission Company; S. Kraus; L. Levy; H. B. Dorsett, doing business as M. K. & T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Live Stock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; George P. Robinson and Joe R. Hoover, a partnership doing business as Robinson-Hoover Commission Company; F. W. Banks and C. A. Rountree, a partnership doing business as Rountree-Banks; E. F. Searls, doing business as George W. Searls & Son; Curtis A. Wood; W. E. Woodford, doing business as W. E. Woodford Live Stock Commission Company; and Ralph W. Wright.

12. By reason of changes in their organization, the following respondents had at the time of the rehearing herein ceased to

engage in business at the Kansas City Stock Yards under the firm name and style under which they were named as parties
33 respondent in this proceeding; W. N. Baucus and Ira Kimmons, a partnership doing business as Baucus and Company; John Clay, F. H. Connor, C. A. Klemen, and J. C. Forrest, a partnership doing business as John Clay & Company; E. L. Knight and E. Tice, a partnership doing business as Knight & Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership doing business as Laird Bros. Live Stock Commission Company; Walter G. Land, doing business as Walter G. Land Live Stock Commission Company; W. M. Leitch Sheep Commission Company; A. E. Long and Robert B. Perry, a partnership doing business as Long-Perry Live Stock Commission Company; Martin Bros. & Lee Live Stock Commission Company; Grover C. Maxwell, doing business as the Grover C. Maxwell Commission Company; T. S. Moffett, H. M. Baker, and J. M. McLain, a partnership doing business as Moffett Live Stock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, a partnership doing business as Ragland, Storts and Burrus; William M. Schwartz, Joseph M. Nolan, and Laurence Feaman, Jr., a partnership doing business as Schwartz-Feaman-Nolan Company; C. A. Stuart, doing business as C. A. Stuart & Company; J. Less White, doing business as Less White Live Stock Commission Company; and Dan Wester, R. W. Wester, and Joseph Smith, a partnership doing business as Wester Bros. & Smith Commission Company. Frank Boddington, doing business as the Boddington Live Stock Commission Company, a respondent in this proceeding, died on October 14, 1932.

13. It appears of record that at the rehearing described in paragraph 9 hereof, all respondents were present by counsel except Farmers Union Livestock Commission; J. G. Jackson; McDonald Live Stock Commission Company; W. O. Park; K. L. Peterson, doing business as K. L. Peterson Order Buying Company; Producers Commission Association; M. W. Rice and George E. Kirk, a partnership doing business as Rice & Kirk; Harry Conley; W. H. Cripe; and J. Ed Freed.

14. It also appears of record that Farmers Union Live Stock Commission; McDonald Live Stock Commission Company; K. L. Peterson, doing business as K. L. Peterson & Company; Pro-
34 ducers Commission Association; Harry Conley; and W. H. Cripe, were duly served with a copy of the aforesaid order granting a rehearing in this cause. It does not appear of record that either J. G. Jackson; W. O. Parke; M. W. Rice and George E. Kirk, a partnership doing business as Rice and Kirk; J. Ed Freed, or any of them, were either present at the rehearing in

person or by counsel or were served with a copy of the order granting rehearing herein. However, it does appear that John B. Gage, Esq., Attorney-at-law of Kansas City, Missouri, who appeared for most of the respondents, both at the original and the rehearing, announced at the original hearing that he represented M. W. Rice and George E. Kirk, a partnership doing business as Rice and Kirk, and there is nothing in the record of the rehearing to negative the continuance of such representation except that said record fails to show the inclusion of these respondents in the list of those stated by Mr. Gage as being represented by him.

15. Oral argument on the basis of the record made at the original hearing and at the rehearing was had before the Acting Secretary of Agriculture on March 24, 1933. Respondents' counsel was given until April 15, 1933, to file a brief, and so filed it.

## Findings of Fact

Upon careful consideration of the entire record in this proceeding, the following findings of fact and conclusions are made:

### I. The Kansas City Livestock Market

16. The Kansas City Stock Yards Company maintains and operates a stockyard at Kansas City, Mo., at which a public market is conducted. This market was established in 1871 and has grown in importance as the production of livestock has expanded and improved in the territory tributary to Kansas City, until it has become one of the leading livestock markets in the United States. A stockyard is a place where producers and others ship their livestock by rail, or by truck, or drive them in on foot, to be offered for sale to the various classes of buyers who resort there to buy the grades and classes of livestock to meet their requirements.

17. The geographical location of the Kansas City market makes it a gateway through which much of the livestock pro-
35 duced in the West and Southwest passes on its way to the feed lots in the Central West and the consuming centers in the East. Considerable numbers of hogs and sheep are sold at the Kansas City Market, but its primary eminence is as a cattle market. It is the largest stocker and feeder cattle market in the world.

### II. Origin of Receipts of Livestock

18. The points of origin of receipts of cattle at the Kansas City market lie principally in the States of Kansas, Nebraska, Colorado, Arizona, New Mexico, Texas, Oklahoma, Arkansas, Missouri, and Idaho. The territory in which the drawing power of

the Kansas City market is distinctly greater than that of its principal competing central markets is made up of the State of Kansas, the most southerly tier of counties in Nebraska, the counties of southeastern Colorado, those of the eastern half of New Mexico, those of the northern portion of Texas, the State of Oklahoma, the counties of western Arkansas, and those of the most westerly portions of Missouri. The hogs arriving at the Kansas City market originate in a more restricted area than do the cattle and sheep. The hog territory may be defined generally as the State of Kansas, south central Nebraska, northern Texas, eastern Oklahoma, western Arkansas, and the counties located in the western third of Missouri. The sheep arriving at the Kansas City market originate in a wide area, embracing the States of Kansas, Colorado, New Mexico, Arizona, Texas, Oklahoma, Missouri, and to some extent the far western and northwestern States.

19. Ordinarily, livestock tends to move from the producer to the consumer by that route which is most economical. The trade territory of a market is determined largely by those factors which make it the most economical center to, through, and from which to move the livestock. One of the chief factors delimiting the trade territory of a market is the rate structure of the railroad transportation system which serves it. Generally speaking, there is a normal trade territory for a livestock market, and this is true of the Kansas City market. Within this trade territory the Kansas City market comes into competition to a varying extent with other markets for the livestock in the counties and states from which it receives its livestock.

36 20. The following table gives by species the total number of livestock marketed from the seven states of Kansas, Texas, Oklahoma, Missouri, Nebraska, Colorado, and New Mexico at Kansas City and four of its principal competing central markets, and the percentage of the total marketed at each:

CATTLE

| Year | Number marketed at five markets | Percent marketed at Kansas City | Percent marketed at Chicago | Percent marketed at National Stockyards | Percent marketed at Omaha | Percent marketed at St. Joseph |
|---|---|---|---|---|---|---|
| 1920 | 4,864,862 | 49.5 | 3.0 | 14.5 | 21.4 | 11.6 |
| 1921 | 4,889,076 | 49.9 | 4.3 | 14.8 | 20.6 | 10.4 |
| 1922 | 5,903,333 | 50.4 | 3.7 | 13.9 | 21.4 | 10.6 |
| 1923 | 6,170,478 | 51.2 | 3.9 | 14.3 | 19.9 | 10.7 |
| 1924 | 6,202,311 | 48.4 | 5.0 | 14.3 | 21.3 | 11.0 |
| 1925 | 5,954,226 | 49.1 | 4.5 | 14.5 | 20.3 | 11.6 |
| 1926 | 5,778,123 | 44.7 | 5.2 | 16.5 | 22.6 | 11.0 |
| 1927 | 4,990,556 | 46.6 | 4.8 | 18.6 | 19.8 | 10.2 |
| 1928 | 4,841,510 | 44.9 | 5.7 | 15.5 | 22.3 | 11.6 |
| 1929 | 4,834,490 | 44.4 | 5.7 | 15.8 | 22.6 | 11.5 |
| 1930 | 4,888,804 | 44.0 | 4.9 | 16.3 | 23.9 | 10.9 |
| 1931 | 4,774,019 | 40.7 | 6.7 | 16.8 | 25.7 | 10.1 |

HOGS

| Year | Number marketed at five markets | Percent marketed at Kansas City | Percent marketed at Chicago | Percent marketed at National Stockyards | Percent marketed at Omaha | Percent marketed at St. Joseph |
|---|---|---|---|---|---|---|
| 1920 | 7,030,618 | 32.1 | 0.8 | 18.9 | 27.4 | 20.8 |
| 1921 | 7,253,311 | 28.6 | 1.0 | 22.3 | 27.9 | 20.2 |
| 1922 | 8,413,587 | 28.8 | 1.6 | 23.0 | 26.3 | 20.3 |
| 1923 | 10,843,476 | 30.3 | 1.2 | 24.0 | 26.0 | 18.5 |
| 1924 | 10,400,432 | 26.3 | 0.9 | 24.0 | 29.9 | 18.9 |
| 1925 | 7,868,149 | 24.6 | 0.9 | 24.1 | 32.2 | 18.2 |
| 1926 | 6,980,344 | 27.6 | 0.7 | 25.8 | 28.2 | 17.7 |
| 1927 | 5,897,008 | 26.4 | 1.8 | 32.5 | 25.1 | 14.2 |
| 1928 | 8,362,044 | 28.1 | 1.1 | 24.8 | 27.6 | 18.4 |
| 1929 | 8,726,396 | 27.8 | 1.1 | 26.3 | 28.0 | 16.8 |
| 1930 | 7,995,230 | 24.9 | 0.8 | 25.6 | 32.1 | 16.6 |
| 1931 | 6,652,778 | 19.4 | 0.8 | 23.1 | 39.0 | 17.7 |

SHEEP

| | | | | | | |
|---|---|---|---|---|---|---|
| 1920 | 3,060,016 | 47.9 | 14.7 | 12.3 | 7.6 | 17.5 |
| 1921 | 3,715,856 | 42.3 | 22.1 | 12.2 | 7.1 | 16.3 |
| 1922 | 3,327,947 | 43.6 | 20.7 | 13.4 | 6.7 | 15.6 |
| 1923 | 3,743,367 | 38.7 | 21.8 | 10.3 | 11.1 | 18.1 |
| 1924 | 3,454,973 | 41.5 | 17.6 | 9.6 | 9.2 | 22.1 |
| 1925 | 3,355,277 | 40.0 | 15.3 | 10.4 | 11.2 | 23.1 |
| 1926 | 3,676,427 | 43.2 | 14.3 | 11.2 | 9.6 | 21.7 |
| 1927 | 3,088,609 | 43.0 | 16.6 | 11.1 | 8.1 | 21.2 |
| 1928 | 3,736,678 | 42.6 | 10.2 | 8.2 | 10.8 | 28.2 |
| 1929 | 3,729,764 | 42.7 | 8.2 | 9.2 | 11.0 | 28.9 |
| 1930 | 4,301,577 | 42.8 | 11.2 | 8.7 | 12.6 | 24.7 |
| 1931 | 4,540,010 | 45.8 | 11.8 | 10.1 | 9.6 | 22.7 |

21. The use of county lines defines trade territory more nearly precisely than does the use of state lines. The record shows for the year 1927 the counties of origin classified on the basis of the comparative drawing power of ten important markets; namely,

37 Kansas City, Omaha, St. Joseph, Sioux City, St. Paul, Denver, Wichita, National Stockyards, Chicago, and Sioux Falls. Those counties which sent to the Kansas City public market a number of head of livestock representing from 75 to 100 per cent of the total rail shipments to all these ten markets were placed in one classification, and those counties which sent from 50 to 75 per cent to Kansas City in another. Other groupings were made of those counties in which the drawing power of Kansas City as compared with that of other markets was less pronounced.

The results of this study of the rail receipts for the year 1927 are given in the following table:

| | Total rail arrivals at the Kansas City public market from counties designated by percentage of Kansas City drawing power | The total rail arrivals at ten competitive markets, including Kansas City from these designated counties | The ratio of Kansas City rail arrivals from designated counties to total rail arrivals at the Kansas City public market (expressed as a percentage of the latter) |
|---|---|---|---|
| Cattle and calves: | | | |
| 75% to 100% counties | 1,265,656 | 1,425,234 | 53.6% |
| 50% to 75% counties | 649,677 | 1,055,786 | 27.5% |
| Two combined (77% area) | 1,915,333 | 2,481,020 | 81.1% |
| Other counties (22.5% area) | 435,042 | | 18.4% |
| Total receipts | 2,350,375 | | 99.5% |
| Hogs: | | | |
| 75% to 100% counties | 578,091 | 641,599 | 36.2% |
| 50% to 75% counties | 444,568 | 720,847 | 27.8% |
| Two combined (75% area) | 1,022,659 | 1,362,446 | 64% |
| Other counties (23% area) | 542,695 | | 34% |
| Total receipts | 1,565,354 | | 98% |
| Sheep: | | | |
| 75% to 100% counties | 433,767 | 469,819 | 29.3% |
| 50% to 75% counties | 466,365 | 739,901 | 31.5% |
| Two combined (74% area) | 900,132 | 1,209,720 | 60.8% |
| Other counties (22.5% area) | 528,204 | | 35.7% |
| Total receipts | 1,428,336 | | 96.5% |

22. Within the trade territory made up of those counties which sent to the Kansas City stockyard from 50% to 100% of the livestock marketed by rail at the ten important markets, producers do not always send their livestock through the central markets.

38 They may ship directly to packers located at Kansas City, packers whose plants are not located at any central market, and to those located at points farther east. The record does not disclose the extent of sales at the so-called concentration points. It does show the direct purchases of the packers located in greater Kansas City from 1920 to 1931, inclusive, and for the first eight months of 1932. It shows also for 1931 the purchases by packers located away from Kansas City but in the 50% to 100% counties of the state immediately tributary to Kansas City. These purchases were as follows:

| | Total | From public stockyards | Direct from country |
|---|---|---|---|
| Cattle | 111,767 | 23,531 | 88,236 |
| Calves | 53,852 | 6,031 | 47,821 |
| Hogs | 1,974,394 | 71,160 | 1,803,234 |
| Sheep | 40,134 | 2,051 | 38,083 |

## III. Manner of Arrival of Livestock at Market.

23. Presently practically all livestock handled by respondents arrives at the Kansas City stockyard either in railroad cars or motor trucks.

24. Until comparatively recently arrivals of livestock were practically exclusively by rail. Formerly it was the custom of one owner to load one species in one or more railroad cars and consign such livestock to a market agency for sale. Under these conditions of transportation and ownership the consignment came to be thought of in terms of the straight car with single ownership and the rates were assessed in terms of cars. In those days multiple car consignments containing livestock of one species and ownership were much more common than at present, such consignments in train loads of 15 or more cars not being infrequent. With the more intensive settlement of the livestock-producing territory tributary to Kansas City, with changes in transportation and marketing conditions, the custom arose not only of shipping consignments consisting of fewer cars but also of mixing species within a car and shipping in the same car livestock belonging to different owners. This brought about in the tariffs or schedules of charges rates per head of livestock to be applied to less than a carload of one species.

25. Not all of the cars used by the 13 railroads serving the Kansas City market are of the same length or same weight
39 capacity. Some of the roads use 36-foot cars; others 40-foot cars. The custom has grown up on the part of those railroads using mainly 36-foot cars of furnishing two such cars when a 40-foot car is ordered by a shipper, and billing the two cars as one. The respondent market agencies assess their charges according to the billing. Some of the roads, in order to meet truck competition, have reduced the minimum weight allowable and have reduced their carload rates accordingly.

26. With the development of the motor truck and the construction of hard surfaced and other improved roads leading from the producing areas to Kansas City, there came another change in the manner of arrival of livestock at the market, namely, the gradual decrease in the percentage thereof arriving by rail and a corresponding increase in that coming in by truck. The record shows these percentages for each year from 1922 to 1931. It will be observed from the following table that in 1922 only .95 per cent of cattle, 5.58 per cent of calves, 5.49 per cent of hogs, and 7.11 per cent of sheep arrived by truck, while in 1931 the corresponding percentages were cattle 11.15 per cent, calves 35.16 per cent, hogs 51.55 per cent, and sheep 13.39 per cent.

| Year | Cattle | | Calves | |
|---|---|---|---|---|
| | Rail (percent of total) | Truck (percent of total) | Rail (percent of total) | Truck (percent of total) |
| 1931 | 88.85 | 11.15 | 64.84 | 35.16 |
| 1930 | 92.19 | 7.81 | 72.99 | 27.01 |
| 1929 | 94.59 | 5.41 | 78.21 | 21.79 |
| 1928 | 96.62 | 3.38 | 82.40 | 17.60 |
| 1927 | 97.64 | 2.36 | 84.88 | 15.12 |
| 1926 | 98.16 | 1.84 | 86.34 | 13.66 |
| 1925 | 98.56 | 1.44 | 90.34 | 9.66 |
| 1924 | 98.93 | 1.07 | 92.84 | 7.16 |
| 1923 | 99.09 | .91 | 93.65 | 6.35 |
| 1922 | 99.05 | .95 | 94.42 | 5.58 |
| | Hogs | | Sheep | |
| 1931 | 48.45 | 51.55 | 86.61 | 13.39 |
| 1930 | 60.78 | 39.22 | 88.83 | 11.17 |
| 1929 | 71.37 | 28.63 | 89.71 | 10.29 |
| 1928 | 78.00 | 22.00 | 91.99 | 8.01 |
| 1927 | 83.92 | 16.08 | 91.74 | 8.26 |
| 1926 | 88.45 | 11.55 | 93.75 | 6.25 |
| 1925 | 91.12 | 8.88 | 94.46 | 5.54 |
| 1924 | 93.28 | 6.72 | 94.74 | 5.23 |
| 1923 | 95.42 | 4.58 | 94.13 | 5.87 |
| 1922 | 94.51 | 5.49 | 92.89 | 7.11 |

40 The above stated percentages are calculated from the total receipts of livestock by rail and by truck, respectively, as compiled by the Kansas City Stock Yards Company. Those totals contain livestock such as that stopped at Kansas City for feed, water, and rest, and that shipped direct to packers through the Kansas City stockyard, neither of which classes is handled by any of the respondents. The record shows the arrivals by rail and by truck, respectively, of the livestock handled by respondents for only the years 1929 and 1931. The following table shows the percentages arriving by rail and by truck, respectively, of the total fresh revenue producing receipts of livestock handled by respondents. By "total fresh revenue producing receipts" is meant the total livestock on which respondents received commissions, exclusive of livestock bought, livestock handled for dealers, and livestock handled for other market agencies.

| Year | Cattle | | Calves | |
|---|---|---|---|---|
| | Rail (percent of total) | Truck (percent of total) | Rail (percent of total) | Truck (percent of total) |
| 1929 | 94.21 | 5.79 | 74.71 | 25.29 |
| 1931 | 88.43 | 11.57 | 58.21 | 41.79 |
| | Hogs | | Sheep | |
| 1929 | 67.25 | 32.75 | 90.77 | 9.23 |
| 1931 | 38.49 | 61.51 | 86.60 | 13.40 |

27. Comparison of the above percentages for the years 1929 and 1931 with those contained in the next preceding table indicates that a greater proportion of the livestock handled by respondents arrives by motor truck than is true of the total livestock which passes through the stockyard. Respondents' tariffs have contained for many years per head rates for selling livestock trucked or driven-in to the stockyard. Quite uniformly these rates have exceeded those charged per head for livestock arriving by other modes of transportation.

28. Not only changing modes of arrival but other factors, such as market demand and the customs of buyers, have caused the number of animals per consignment and per draft to decrease. In other words, increasingly respondents' business has taken on more of the aspects of the retail handling of a commodity. These changes have brought with them increasing costs per head of livestock handled, but such costs are included in those hereinafter stated in detail.

41 29. The foregoing developments caused the great majority of the respondents to reach the conclusion that tariff structures, which had had their inception in the days of the exclusive carload business and which, in spite of some modifications, were still based on the carload as the unit, had ceased to fit the business which respondents were doing. Accordingly, between the time of the first and the last hearing in this proceeding, those respondents filed their Tariff No. 3 which, to a considerable extent, discards the carload as the unit of charge and bases its rates on the head of livestock of each particular species regardless of the mode by which such livestock arrived at the pens of the respective respondents.

## IV. The Facilities of the Market Place

30. The Kansas City Stock Yards is located in Missouri and Kansas, in that part of the central industrial district of Kansas City known as the "West Bottoms." The yard is divided into three sections. The west yard lies on the west side of Kansas River and was formerly used as a quarantine yard. The main yard lies on the east side of the Kansas River and includes the cattle, hog, sheep, and horse and mule divisions, in addition to the exchange and show buildings. The north yard lies north of the main yard and is connected with it by an underpass beneath the Union Pacific and Missouri Pacific railroad tracks. With rare exceptions, the buying and selling of livestock are carried on in the main yard.

31. The Kansas City market is served by 13 trunk line railroads and by the Kansas City Connecting Railroad, which owns rights-of-way, tracks, and loading and unloading docks and chutes, thus affording adequate transportation facilities in connection with the loading and unloading, receiving and delivering of livestock at the stockyard. It is the terminal carrier which forms the connection between the stockyard and all railroads entering Kansas City.

32. The main yard is generally triangular in shape, the base of the triangle being at the north end of the yard. There are five railroad docks on the west side of the main yard, extending in a north and south direction. Three of these docks lie between the river and the hog house, and two lie between the hog house and the cattle division. These five docks have approximately 500 unloading chutes.

42 33. The hog house is a three-story structure, rectangular in shape, extending in a north and south direction between the two sets of railroad docks. The respondent commission firms use the pens on the second floor of the hog house for selling hogs. The ground floor is used for holding cattle which are not delivered to the respondent firms immediately upon arrival, and for holding livestock which is to be shipped out of the yard. Those respondents who are engaged solely in the business of buying hogs on order use a part of the third floor of the hog house for sorting and preparing livestock for shipment. The remainder of the third floor is used for holding livestock to be delivered to packers, and a part of the roof of the hog house is covered with pens and used for the same purpose. The unloading locks and receiving pens for hogs arriving by truck are located in the north yard. Hogs unloaded there must be driven through the underpass which connects with the main yard at the north end of the hog house.

34. The cattle division lies between railroad dock No. 5 and the public thoroughfare which bounds the yard on the east. This division is not under roof and is on the ground floor. However, the scales are on viaducts, with the exception of two cattle scales which are on the surface in the traders' division. The pens and alleys in the north and, to some extent, the west part of this division are used by traders who buy and sell the different classes of cattle and calves. The commission division of the cattle yard is rectangular in shape, extending in a north and south direction, adjoining part of dock No. 5 and part of the traders' division on the west. The respondent firms have pens assigned to them in this division, in which cattle and calves are exposed for sale.

There are unloading docks and receiving pens at the north end of the main yard where cattle and calves are received from trucks and later driven to the commission division.

35. The sheep barns are located in the southern part of the main yard. There are three of these barns, each being a one-story structure. The unloading docks for drive-in sheep, and the sheep dipping vat are located in this division.

36. The plant and pens used in connection with the immunization of hogs are situated in the southwest corner of the cattle
43 division. The dipping vat and branding chutes for cattle and calves are located in the north yard. There is also a stock hog division in the north yard where stock hogs may be handled without the necessity of dipping and immunizing, if they are not brought into the main yard. This division is for the purpose of encouraging the movement of stocker and feeder hogs through the public market. If such hogs are taken to the main yard to be sold or weighed, they must be dipped and immunized in accordance with State and Federal regulations.

37. The Kansas City Stock Yards Co. owns an office building, commonly called the Exchange Building, which is located midway on the east side of the cattle commission division. In addition to housing its own offices in this building, the company leases office space to respondents and others having business at the market. Opposite the Exchange Building and on the west side of this division is the train office building where the records of incoming and outgoing shipments are made. It is a sort of clearing house for the detailed information relative to the movement of livestock to and from the market.

38. Livestock arriving at the Kansas City market by rail is unloaded by employees of the stockyard company, which acts as agent for the carriers, who pay the company for this service. The loading and unloading facilities of the Kansas City Connecting Railroad are connected with an extensive system of viaducts, alleys, stock drives, subways, and bridges, which afford adequate facilities for receiving and distributing livestock to all parts of the stockyard.

39. In each division of the yard adequate scale facilities are provided by the stockyard company. There are three scales in the sheep division, one of which is designed for weighing truck consignments. There are 14 scales in the cattle commission division. These scales, the sorting and catch pens, and alleys used in connection therewith, are elevated above the pens and alleys on the ground level. They are reached by inclines and viaducts.

These scales are arranged in pairs, one scale in each pair being called the "high line" scale and used for weighing drafts of 10 head or more, and the other the "jack pot" scale and used for weighing small drafts. At the west side of the cattle yard there is a small scale maintained for the purpose of weighing
44 crippled hogs. There are five scales maintained in the hog commission division on the second floor of the hog house.

40. Upon the arrival of livestock by rail at the stockyard a waybill, representing each carload, is delivered by an employee of the railroad company to employees of the stockyard company. Information as to the dock number, the time at which the train is set, names of consignor and consignee, the state of origin, car number, and class of livestock in the consignment is taken from the waybill and placed on the bulletin board by the stockyard company. These bulletins are hung in the lobby of the train office building, where they are consulted from time to time by representatives of the respondent firms for the purposes of ascertaining what livestock may have arrived consigned to them. After livestock is unloaded at the yard, the dock foreman, a stockyard employee, places a copy of the record of each car in a designated place in the chute alley, and representatives of commission firms consult these records to determine the location of livestock consigned to their respective firms.

41. Cattle and hogs arriving by rail are delivered to the respondent firms by the stockyard company at the unloading chutes. If their representatives are not at the unloading chutes to take delivery before the chute pens are needed for unloading other livestock, the stockyard company yards the livestock in convenient pens near by. Under such circumstances the hogs are usually taken to the pens on the second floor of the hog house, and cattle are yarded in pens on the ground floor of the hog house. The representatives of the respondents then call for the livestock at these divisions. Sheep arriving by rail are delivered to the respondents' pens in the sheep barns by the stockyard company. In the case of cattle and hogs arriving by truck, the respondents are required to drive the livestock to their own pens from the truck unloading chutes or near-by pens. Sheep arriving by truck are unloaded at a convenient place in the sheep division and are driven to the sale pens by the stockyard company.

42. The stockyard company tags all animals arriving crippled or dead, in order that they may be properly identified. There is an arrangement whereby a rendering company gathers up
45 the dead animals and removes them to its plant, remittance

therefor being made to the commission firms by the rendering company. Crippled hogs are gathered up by the stockyard company and delivered to a "crip" scale, where they are weighed and are then removed by the packers who purchase them. There are two associations which engage in the business of handling crippled cattle and sheep from the yards direct to the packing plants. Such crippled livestock is purchased on a salvage basis, and remittance is made to the commission firms to which the livestock is consigned. These associations make a special charge for this hauling service. This charge is deducted from the proceeds of the sale of the animals.

43. The stockyard company furnishes all the feed fed in the yards. It delivers the feed to the commission men's pens and feeds the livestock. Water and facilities for watering in each pen are also provided by the stockyard company. Employees of the respondent commission firms turn the water on. It frequently happens that the stockyard company will turn the water off. The stockyard company cleans the pens and maintains tractors, trailers, and other necessary facilities for removing debris. In seasons of bad weather, or on other occasions, the respondent firms may clean their own pens. Such cleaning consists in throwing the manure to one side of the pen or under the troughs. The employees of the stockyard company remove it later.

44. The stockyard company maintains weighmasters who operate the various scales and issue scale tickets containing information relative to each draft weighed. It also provides a man who assists in putting the livestock on the scales to be weighed, and a suitable force of employees to receive and yard the livestock when it is driven off the scales.

45. For its services and use of its facilities heretofore described the stockyard company makes a yardage charge on a per head basis and a separate charge for feeding. Respondents deduct these charges from the gross proceeds of sale of the livestock and pay them to the stockyard company. Separate charges are made by the stockyard company for services and use of facilities in connection with the branding, dipping, testing, immunization, or other special services. Usually these special services are
46 required in connection with the movement of livestock from the market back to the country, and the charges therefor are paid by the purchasers. If for any reason any of these services should be required by the shipper of livestock to market, the charges would be deducted from the proceeds of the sale of his livestock.

46. After livestock has been sold and weighed, it is yarded and held in pens by the stockyard company for delivery to the purchaser, or until it can be loaded, if it is to be shipped to points outside the market. If the livestock is to be shipped, the employees of the stockyard company load it on the cars. This service is rendered by the stockyard company as agent for the carrier, and a separate charge is paid by the carrier.

47. The Kansas City Stock Yards Co. endeavors through advertising and soliciting to induce shippers to consign their livestock to market for sale, and to attract buyers for such livestock. It maintains a force of employees in the country who make contacts with producers and growers of livestock. These men have knowledge of market conditions and the various grades and classes of livestock. The stockyard company maintains an information bureau which keeps in touch with the field representatives and gives them current market information. They assist formers and producers in sorting and grading their livestock, disseminate useful market information, and endeavor to obtain shipments for the Kansas City market. They do not attempt to influence the shipment of livestock to any particular commission firm.

48. A branch of the United States Department of Agriculture maintains an office at the stockyard, which is a service organization having for its purpose the collection and dissemination of market information. This office maintains a bulletin board in the Exchange Building on which it posts information in regard to the estimated receipts at Kansas City, and other leading livestock markets of the country, the prices and trend of prices at the various markets, and the prices of dressed meats in Philadelphia, Boston, and New York. Facts as to local market conditions are obtained by employees of that office, who are regularly assigned to different divisions of the yard for the purpose of making contacts with salesmen and buyers. A system of leased wires
47 is maintained whereby similar facts are readily obtained from other markets. In addition to posting information from time to time on the bulletin board throughout the day, this office disseminates it by radio at three different periods, furnishes it to the telegraph companies and to the press associations, and publishes a mimeographed report, which circulates extensively among producers and others in Kansas, Missouri, and, to a certain extent, in other states. The informational service of this office is available to all who request it.

## V. Disposition of Livestock Receipts

49. Livestock received at the Kansas City market falls into two general classes: (1) stockers and feeders, and (2) killers or butcher livestock. The demand for the stockers and feeders comes principally from those producers who are equipped to feed and finish livestock, either in feed lots or on pasture lands. The livestock ready for slaughter is purchased by local packers and butchers and by packers located at distant points. The chief outlet for this class of livestock is the local packer demand. Contiguous to the market are located the plants of the four large packers, Swift, Cudahy, Wilson, and Armour. There are also small packers and local butchers who cater principally to the local demand for dressed meats and meat products. The outside packers usually make their purchases through order buyers, who are regularly engaged in that business at the market. Local packers and butchers are customarily represented on the market by salaried employees. Feeders and finishers generally purchase livestock through commission firms, although they sometimes make their own purchases. There are also dealers at the market who buy for the purpose of reselling at a profit, either on the Kansas City or some other market, without slaughtering, and also without feeding such livestock to any great extent. Although dealers operate to some extent in connection with the handling of all classes of livestock, their principal activity at the Kansas City market is in buying and selling stocker and feeder cattle. Their function is primarily that of buying unsorted lots and small lots of cattle, which they later sort into different grades and classes to meet the requirements of the feeders and finishers. The disposition of the livestock received at the Kansas City market each year from 1920 to 1931, inclusive, was as follows:

48

| | Cattle and calves | | Other shipments |
|---|---|---|---|
| | Local slaughter | Stocker and feeder shipments | |
| 1931 | 850, 553 | 653, 437 | 440, 339 |
| 1930 | 1, 006, 989 | 712, 054 | 426, 012 |
| 1929 | 1, 046, 799 | 729, 480 | 378, 908 |
| 1928 | 1, 029, 385 | 779, 707 | 375, 680 |
| 1927 | 1, 335, 552 | 755, 867 | 356, 610 |
| 1926 | 1, 459, 290 | 761, 119 | 378, 231 |
| 1925 | 1, 631, 058 | 907, 686 | 381, 764 |
| 1924 | 1, 552, 429 | 907, 601 | 442, 221 |
| 1923 | 1, 559, 364 | 1, 161, 540 | 437, 866 |
| 1922 | 1, 406, 845 | 1, 151, 256 | 383, 208 |
| 1921 | 1, 199, 603 | 787, 904 | 456, 454 |
| 1920 | 1, 263, 882 | 778, 214 | 431, 280 |
| | Hogs | | |
| 1931 | 836, 655 | 54, 852 | 443, 994 |
| 1930 | 1, 096, 134 | 74, 915 | 841, 036 |
| 1929 | 1, 454, 334 | 104, 097 | 9 07, 374 |
| 1928 | 1, 705, 286 | 104, 841 | 870, 085 |
| 1926 | 1, 385, 208 | 98, 310 | 411, 963 |
| 1925 | 1, 427, 208 | 110, 087 | 482, 513 |
| 1924 | 1, 236, 506 | 66, 528 | 764, 556 |
| 1923 | 1, 871, 991 | 134, 287 | 930, 753 |
| 1922 | 2. 721, 412 | 282, 900 | 606, 340 |
| 1921 | 2, 052, 229 | 161, 753 | 426, 313 |
| 1920 | 1, 712, 534 | 93, 505 | 392, 919 |
| | 1, 838, 080 | 200, 196 | 401, 618 |
| | Sheep | | |
| 1931 | 1, 433, 773 | 257, 774 | 563, 279 |
| 1930 | 1, 518, 225 | 252, 418 | 248, 548 |
| 1929 | 1, 290, 177 | 261, 722 | 196, 120 |
| 1928 | 1, 270, 207 | 350, 675 | 156, 789 |
| 1926 | 1, 124, 604 | 353, 591 | 137, 927 |
| 1925 | 1, 202, 043 | 358, 983 | 205, 433 |
| 1924 | 1, 045, 517 | 318, 655 | 140, 256 |
| 1923 | 1, 046, 447 | 367, 648 | 156, 377 |
| 1922 | 1, 100, 978 | 406, 930 | 147, 139 |
| 1921 | 1, 000, 200 | 385, 282 | 172, 736 |
| 1920 | 1, 307, 428 | 324, 150 | 160, 512 |
| | 1, 065, 832 | 474, 409 | 148, 603 |

The above table does not include direct shipments to packers except in those cases in which such shipments pass through the Kansas City stockyard. The direct shipments contained in the local slaughter of hogs shown above was for the same period as follows:

| | |
|---|---|
| 1931 | 180, 000 |
| 1930 | 159, 000 |
| 1929 | 373, 171 |
| 1928 | 323, 787 |
| 1927 | 226, 881 |
| 1926 | 164, 500 |
| 1925 | 182, 458 |
| 1924 | 296, 470 |
| 1923 | 332, 709 |
| 1922 | 187, 380 |
| 1921 | 153, 461 |
| 1920 | 31, 859 |

50. The demand for livestock in Kansas City, and especially that for hogs, is greater than that supplied by the livestock arriving at the public market. Large numbers of hogs destined for local slaughter in Kansas City do not pass through the stockyard. In addition to the hogs received through the stockyards the packers received at their plants located at Kansas City 1,679,138 in 1929, 1,185,258 in 1930, 1,478,960 in 1931, and 1,319.519 from January to August, inclusive, 1932.

## VI. Business in Which Respondents Are Engaged

51. In the early development of the West drovers were accustomed to bring their livestock to a convenient point at the junction of the Kansas and the Missouri rivers and there sell it. With the development of trading in livestock at this central point there grew up a more firmly established and permanent market place. Some of those who resorted there sold not only the livestock which belonged to them but undertook the selling of that belonging to others. Later resident selling agencies were developed which devoted their attention exclusively to the handling of livestock for others at the central market. While it is the privilege of the owner or shipper of livestock to the Kansas City public market to sell his own livestock, the complicated machinery of the market place, which the selling agencies and the stockyard company have worked out for their own convenience, make it a practical necessity for the producer to consign his livestock to some regular selling agency for sale. A like situation prevails with respect to many who seek to buy livestock on the market. They may neither be able to come to the market in person nor find it to their advantage to maintain employed buyers. A demand has developed, therefore, for the services of those who stand ready to act as representatives of the buyers on the market. There have come
50 into existence two somewhat distinct classes of operators.

The first consists of what is commonly known as commission firms. They hold themselves out to the public both to sell and to buy livestock on a commission basis. Generally speaking, the buying operations of commission firms constitute a small part of their total business. The second class is made of that group of respondents commonly known as order buyers. They specialize ing buying livestock on order and do no selling on a commission basis.

52. The nature of the business in which the respondents are engaged is such that it may be carried on under different types of organization. Among the respondent firms there are individual proprietorships, partnerships, and corporations. One of the respondent firms is operated as the branch house of a firm maintain-

ing its principal headquarters at another market. Two of the respondents are organizations of producers engaged in operating on a cooperative plan. These return their profits, or a portion of them, if any, to the members on a patronage basis. Four of the respondent firms are registered to handle sheep only. All others engaged in selling and buying livestock hold themselves out to the public to handle cattle, calves, hogs, and sheep. Some order buyers specialize in the handling of one species of livestock and others handle all species.

## VII. Service Rendered by the Respondents

53. The livestock commission business carried on by the respondents is conducted on the premises of the stockyard company. The physical handling and caring for the animals and their selling and weighing take place in pens belonging to the stockyard company and assigned by it to the various respondents. The office work growing out of the sale of the animals and the accounting to the owner for the proceeds of sale is carried on in the Exchange Building also owned by the stockyard company. The respondents do not pay for the use of the pens but pay rent for the office space which they occupy in the Exchange Building. The rendition of the services of selling and buying livestock makes it necessary for the respondents to employ assistants in the yard and in the office. There is a wide variation among the firms as to the character of their organization and in the extent to which work can be specialized. A relatively small volume of
51 business does not permit of that degree of specialization which is possible in the case of a firm which receives a large volume of business. Most of the larger firms have a separate department for each species of livestock handled and usually place a head salesman in charge of each department. In some instances divisions exist within a department as, for instance, in the case of those firms which handle a large volume of business. Such firms may have a fat steer division, a stocker and feeder division, a butcher cattle division, and a calf division. On the buying side of the market each buyer is generally looking for a specialized grade or class of livestock. Those packers who are represented by salaried buyers have special buyers for the different grades and classes of cattle. Specialization has not been carried to the extent in the case of hogs and sheep that it has in the case of cattle. Order buyers are usually in the market for distinct grades and classes of livestock. Dealers generally do not specialize to any great extent. Their market function is to buy mixed grades and classes of livestock and then to sort them in accordance with the needs of the trade. In some cases the owner, or owners, of a small

firm do much of the yarding and office work in addition to the selling of the livestock.

54. The situation with respect to specialization among salesmen applies in general to the yarding and office work. The large firms divide their help into divisions in the cattle alleys and place each division in charge of a head yardman. In the larger firms the various office employees are frequently assigned to special tasks or departments under the supervision of an office manager. As a general rule the yard work is heaviest in the early part of the day and the office work heaviest in the latter part of it. Because of this, some of the office employees may assist in the yard work in the forenoon and some of the regular yard employees may help in the office in the afternoon. The organizations are flexible and permit a high degree of cooperation among the employees of a firm.

55. Some of the respondent firms do not have sufficient livestock of certain species to warrant the maintenance of a selling organization. Many firms, for instance, do not have sheep salesmen. These firms engage the salesmen of some other firm. This
52 arrangement concentrates the selling and yarding of sheep in the hands of a comparatively few firms, and thus makes possible a high degree of efficiency. A firm which does not elect to sell the sheep consigned to it assesses the regular commission charge against the consignor and with a part of this revenue pays someone else for selling the sheep. Each firm handles all the office and accounting work growing out of the sale of sheep consigned to it. An arrangement similar to that described for the handling of sheep is sometimes entered into with respect to hogs and cattle, but in the case of the latter species the arrangement is less frequent than in the case of sheep. A few firms do not maintain their own office force but engage other respondent firms to do their office work for them.

56. Most of the livestock received for sale at the Kansas City market arrives during the early morning hours. It is important that the livestock be handled expeditiously in order that it may be watered, fed and sorted in time for the market. The bulletins prepared by the stockyard company with respect to the arrivals of livestock are hung in the train office building, and there respondents' employees go to obtain information as to arrivals. Frequently they obtain additional information in regard to consignments from letters, telephone calls, and personal contact with shippers. As soon as the information is obtained, the representative of the commission firm goes to the designated place near the track where the livestock is unloaded and obtains a chute slip showing the car number and the number of chute in which the stockyard company has placed the livestock.

57. Rail arrivals of sheep are driven from the unloading chutes to the pens of respondent market agencies, and formal delivery is made there. Cattle and hogs arriving by rail are delivered to the respondents at unloading chutes or near-by pens. After the representative of the commission firm has ascertained the pen in which the livestock has been placed, he goes to the representative of the stockyard company who is in charge of the particular division, and requests delivery. This representative of the commission firm is usually called a "train runner." The livestock is counted out of the pen into the alley, and a train runner then goes ahead of it, leading the way to the pens assigned to his firm.

53 In the case of cattle and calves delivered at the unloading chutes, the stockyard company furnishes a man to go behind each load of livestock. During periods of heavy runs a train runner may lead a procession containing a number of carloads, each kept separate from the other by a stockyard employee. Such assistance is not furnished by the stockyard company in the case of driving hogs, nor in those instances where cattle are yarded temporarily in holding pens. When livestock reaches the pens of a commission firm, it is counted into the pens, usually by the head yardman for that firm. In the case of night arrivals during the season of heavy runs of cattle, some firms maintain a night train runner, either as an individual employee or one employed jointly with other firms.

58. Pens are assigned to the various commission firms in the different divisions of the yard. These assignments are made by a committee. The number of pens assigned to each firm is governed by the volume of business handled, and the location is governed largely by the length of time during which a firm has been in business.

59. Sheep arriving by truck are delivered at the sheep division. With respect to truck arrivals of hogs and cattle, it is necessary for the respondents to drive the livestock from the truck unloading chutes or nearby holding pens to their respective pens in the regular divisions. This work is accomplished either through individual employees or through those who make it their business to drive livestock at a stipulated head charge. The stockyard company makes available information in regard to truck arrivals of livestock through notification slips placed in boxes at the respective drive-in unloading chutes.

60. In taking custody of livestock consigned to them for sale respondents' employees make such records and memoranda as will enable them to preserve the identity of each consignment. Through experience gained in handling livestock, these employees can often identify animals once they have seen them. Frequently a consignment of livestock is owned by two or more people. Such

livestock is usually marked in some distinctive way in order to maintain the identity of each owner's livestock. There are also frequent shipments of branded livestock, and these brands serve as a basis for identifying ownership.

54 61. Occasionally some of the livestock contained in a consignment is intended for a market agency other than the one to which it is billed. Such livestock is placed in a separate pen. The receiving agency then notifies the firm to which the livestock is to be delivered, and that firm removes the animals to its pens.

62. Traders who buy and sell in the yard for profit sometimes place their livestock with the respondent firms to be sold. This is called "planting" and such livestock is referred to as "seconds." In such cases the traders usually drive their livestock to the commission firms' pens.

63. Upon receipt of livestock in its pens an employee of the commission firm, usually the head yardman, orders feed from the stockyard company, which maintains the equipment for the delivery of the feed and employees who do the feeding. The employee of the commission firm keeps the record of the amount of feed ordered. Sometimes the head yardman will sort and grade the livestock before feeding. As soon as it has been fed and graded, it is watered. Frequently when pens are available, a consignment of livestock will be divided into several bunches in order to enable the animals to drink with less confusion. Some of the work of preparing livestock for sale is done by the yardmen. When the salesmen arrive in the yard they may do further sorting and grading.

64. The regular market hours are from 8 a. m. to 3 p.m., but the stocker and feeder class of livestock may be bought or sold at any time. Salesmen usually go to their offices some time before the market opens and review available information, in order that they may judge the trend of the market. In many instances salesmen have seen the cattle in the country before they were shipped. Frequently the owners telephone or write to the salesmen about the shipment. Sometimes shippers will accompany their shipments and give the salesmen helpful information in regard to the livestock to be sold. Salesmen also check up on the condition of the previous day's market. They obtain similar information in regard to the other livestock markets. They ascertain the estimated receipts of livestock at the Kansas City market and other markets for that day and opening prices for the day at other markets, in so far as such information is available.

55 65. The salesman then goes to the yard to look over the consignments and does whatever sorting is, in his opinion, necessary. When the market opens the buyers go to the pens where they, in company with the salesman, look at the livestock.

According to the custom of the market only one buyer is taken into a pen at one time. If the livestock is suitable for the buyer, an offer and a bid are made. If a sale is not consummated, the buyer goes on to some other salesman, and the livestock is shown to the next buyer. On some days the buyers are very active and go out into the yard as soon as the market opens. On other days the buyers go out late in the forenoon and are slow to buy. There are many factors, the more important of which are the activity of the consuming demand and the supply of livestock, which determine whether a market is active or dull. It is bargaining among salesmen and buyers which finally determines what the market prices for the various grades and classes will be each day. The market may be strong at one time of the day and weak at another time. It is necessary that salesmen study the forces which affect the market from hour to hour, in order to determine in their own mind the best time at which to sell their livestock. Sometimes, although not frequently, a shipper will instruct a salesman not to sell livestock under a stipulated price. However, generally speaking, the shipper leaves this matter to the judgment of his salesman. In addition to the study of information in regard to supply and demand as factors affecting prices, a salesman must also be a judge of the factors which affect the value of livestock. In view of the fact that there is a wide margin between the prices paid for the highest quality of cattle and the lower grades of cattle, it becomes a very responsible task for a salesman to judge accurately the grades of cattle which he has to sell.

66. Once the market is made, sales are consummated rapidly, and the movement of livestock to the scales for weighing begins. The yardmen usually drive the livestock to the scales, although the salesmen in some instances assist in this work. As soon as sales are consummated the salesman gives his yardman information in regard to the names of the owner and the buyer, and how the livestock is to be weighed, if special sorting at the scales is required by the buyer. The yardman gives the weigh-
56 master the information as to the owner and purchaser of the livestock when the livestock is driven on the scales. The weighmaster records this information on the scale ticket. When the livestock is driven off the scale, it becomes the property of the purchaser, and the employees of the stockyard company take possession of it and yard it for the buyer. Copies of scale tickets are taken by the yardman to the salesman, either in the yard or in the office, and the salesman marks the price thereon.

67. Respondents also assume certain responsibility in connection with the determination of the credit of the buyers of livestock. They know those who are members of the clearing house and do not hesitate to sell livestock to such members. If the pros-

pective buyer is not a member of the clearing house, it is necessary to investigate his credit. A large percentage of the purchases are made by those whose credit is already known to respondents' salesmen.

68. The price of crippled and dead animals is determined upon a salvage basis. Standing arrangements are had with the Standard Rendering Company in connection with the price paid for dead animals, and similar arrangements with packers govern the determination of the prices paid for crippled animals. In this manner the crippled and dead livestock can be handled promptly and with the greatest convenience to all concerned.

69. In the cattle division there are many small lots of livestock to be weighed. There are frequent drafts consisting of only one or two head. This condition prevails especially in connection with the many grades and classes of butcher livestock. The larger commission firms maintain what is known as a "jack pot" man. He is one who possesses the peculiar ability to identify many different animals as to ownership and buyers. As a salesman consummates the sales of these individual head or small lots, he advises the "jack pot" man, who turns the animals into the alley. When he has accumulated a convenient number of head, he drives them to the scale where he sorts them according to ownership and purchaser. Special scales are maintained for weighing "jack pots." This procedure makes it possible to economize in time and equipment in handling this character of business.

57 70. Those who are engaged in the business of buying livestock undertake to inform themselves in the same way as the salesmen do. Those who buy livestock on order will make a survey of the livestock in the yard to determine the supply of those classes and grades which are suitable to their orders. After they find a good supply of the kind of livestock which they know some of their customers use in their trade, they may telegraph or telephone to their customers, give an estimate of the price, and the prospect of obtaining supplies that will meet their particular requirements. Sometimes these customers place standing orders with their buying representative at the market. Frequently customers come to the market and accompany the buyers as they go about the yard looking for the kind and class of livestock desired. Sometimes order buyers will buy livestock when the price appears favorable and then obtain the orders later. One of the chief qualifications of a buyer is to be able to judge the killing qualities of slaughter livestock and the feeding and finishing qualities of stockers and feeders. In case the customer is a countryman or some one not known to the buyer, it is necessary to investigate his credit. Usually those who are not regularly engaged in business

at the market do not pay cash or the equivalent of cash for their livestock. The order buyer must pay for the livestock promptly, and in many cases it will be several days before payment by the customer is realized.

71. If livestock is purchased to be shipped out, the buyer orders the necessary cars from the railroad company as soon as the purchase is made. Then he ascertains the number of head and the pen in which the livestock is held, and gives this information to the railroad. In case of stocker and feeder livestock which is bought to go back to the country, there are certain incidental services which may be necessary, such as branding, dipping, dehorning, and vaccination. Although these services are performed by the stockyard company, the yardman for the buyer supervises such operation. When the livestock is ready for shipment, the loading out is done by the stockyard company's employees. It is customary for a yardman or someone representing the buyer to supervise this work.

72. The office work in connection with the buying and selling of
of livestock consists primarily in rendering accounts
58 to shippers and purchasers and making remittances and collections, as the case may be. Forms known as account sales are used in rendering accounts in the case of livestock sold. One of these forms is prepared covering each consignment, showing the name of purchaser or purchasers, the number of drafts, the number of head, weight, and price of each draft, gross proceeds, items of expense such as freight, feed, yardage, commissions, and other deductible items, and the net proceeds. A copy of this is sent to the owner. In case of plural ownership consignments the accounting may be handled as in the case of single ownership consignments, in which event the prorating is done at the shipping point. However, it happens frequently that a commission firm is requested to do the prorating, which consists in figuring the gross proceeds of sale of each owner's livestock, the various expenses prorated to each owner, and the net proceeds of sale of each. Sometimes a request is made for individual account sales for each owner in a plural ownership consignment. In connection with the purchase of livestock an account purchase is prepared somewhat in the same manner as an account sale, giving the details as to the transaction, including the cost and any local expenses, such as commissions. Bills for the purchase of livestock which are presented are checked before the account purchase is made out.

73. The respondent market agencies which are engaged in selling livestock have followed the practice for a number of years of remitting the proceeds of sale of livestock through the bank. Usually the shipper will designate the bank to which he desires that the proceeds of sale be sent. Respondents have available to

them information with respect to the various Kansas City banks which are correspondents of the local banks throughout the Kansas City trade territory. As soon as the net proceeds of sale have been computed, a commission firm will place an order with its bank to deposit the proceeds to the credit of the shipper at his bank. If requested, this transaction is handled by telegraph rather than by mail. A special effort is made by all market agencies to remit as promptly as possible, and the remittances are made as soon as the net proceeds of sale of each consignment can be ascertained, even though the collections from the buyers have not been made. Usually remittances of proceeds from the
59 sale of truck-in livestock are made by firm check. In some cases such proceeds may be remitted through the bank or by cashier's check. Most of the collections are made through the clearing house. The packers, order buyers, and brokers who clear traders are members of the clearing house, and under the rules of that organization there are certain time limits within which they must remit through the clearing house for the livestock which they have purchased. Order buyers usually draw drafts upon their customers as soon as the livestock has been shipped, or they may take their customer's check. It seldom happens that a customer in placing an order will advance the cash.

74. Salesmen and members of respondent firms spend considerable time in the office interviewing shippers. This is done usually after the selling is completed. If shippers are not at the market, a salesman will write a letter to each one for whom he has sold livestock that day, giving information in regard to the transaction and such other general market information as he may deem helpful to his customer. However, this is not always done with respect to livestock received by truck.

75. There exists an arrangement between each of the respondents and the stockyard company whereby the latter, acting as agent of the carrier, will make formal delivery of livestock before freight charges on the consignment are paid. The stockyard company requires each respondent market agency to which livestock is shipped to furnish a bond covering the payment of freight, yardage, feed, and any other charges. These charges are deducted from the gross proceeds of sale of livestock before remittances are made to the shippers. The bills for these items are presented to respondents through the clearing house.

76. Each respondent furnishes a bond conditioned upon the faithful and prompt remittance of the proceeds of sale of livestock and the prompt execution of orders and the payment for livestock bought on order. Such a bond is required by the rules of the Kansas City Live Stock Exchange of its members, and such a bond

is required of all market agencies under the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder.

60 VIII. Personal Service Character of Respondents' Business

77. The livestock commission business is essentially of a personal service character. The amount of capital necessary to conduct it is relatively small. The use of certain material equipment, however, such as office furniture and fixtures, and equipment of more or less elaborate character, automobiles and horses, is essential in the rendition of the service. The automobiles are used for trips to the country both to solicit shipments and to appraise livestock. They also are used for travel to near-by feedyards whereat livestock may be under the control of respective respondent firms while it is being fed and also whereat respondents sometimes consummate sales of livestock. In some instances the automobiles are owned by the respondent firm which uses them. In others they belong to a member or employee of the firm and their use is compensated for on some prearranged basis, such as actual expense or mileage. The horses are used in the cattle yards and are ridden by the cattle salesmen in the course of their handling and selling of cattle. In some instances they also are ridden by patrons who either have cattle consigned to respondents for sale or else are seeking to purchase cattle from respondents. In some instances these horses are owned by the respective respondent firms who use them. In others they are the property of the individual salesmen who may be owners or employees of a respondent firm. In still other instances they belong to the stockyard company and are rented, as occasion requires, at an agreed rental usually on a time basis.

78. In addition to the more or less permanently invested capital enumerated above, a certain amount of cash working capital is required. The business is essentially a cash one. That is to say, it comprises the receipt and remittance of the proceeds of sale of property owned by its patrons. Nevertheless, only those sales of livestock which are billed to the purchaser prior to 2 o'clock p. m. on the day of sale are paid for on that day. Respondents follow the practice of remitting the proceeds on the day of sale. Such remittances are made by deposits in banks at Kansas City for transmission to the banks of respondents' patrons. This form of remittance is desirable because it eliminates the so-called "float."

It requires, however, that each respondent firm have on
61 hand or available through bank credits, a sufficient amount of working capital daily to cover the difference between the total proceeds of sales made each day and the total collections

received on that day. A greater need for cash working capital arises from respondents' activities in the purchases of livestock for their customers. The custom of the market place is such that this livestock must be paid for not later than 10 o'clock a. m. of the day following its purchase. The patron, who usually is a feeder, rarely comes to the market in position to make cash payment. This is partly at least because he does not know in advance exactly what the monetary requirements are to be and because in many instances he cannot arrange credit with his local bank until after the arrival of the livestock at his railroad station or firm. It appears impracticable to avoid extension of credit to these patrons. The livestock so purchased is paid for by the respondent firm and a draft is drawn on the patron through regular banking channels. Such drafts ordinarily are paid within from two days to two weeks, but infrequently may require more time.

79. The revenue of respondents' business consists of commissions charged by them for the sale and purchase of livestock. By far the greater portion of it comes from sales. The revenue from sales is deducted from the gross proceeds of such sales and therefore is received daily. This practically does away with any necessity for accounts receivable except in those infrequent instances in which a respondent firm advances money to a patron in contemplation of the sale of livestock, either already received at or on its way to the market. In the buying of livestock the receipt of commissions customarily is delayed from two days to two weeks. Some of respondents' cash requiring expenses are paid in advance, necessitating a small amount of working capital for that purpose. There is a further need for working capital to tide over those seasons when the low run of livestock may not produce enough income to maintain the overhead expenses of the business. It is not altogether practicable for a commission firm to expand and contract its organization to meet the fluctuation in receipts of livestock. Additional yard help may be hired during the heavy seasons but there are certain employees, such as salesmen, who must by the nature of the business be retained throughout the year.

62 80. The stockyard company requires of those engaging in business on the market a bond covering, among other things, the payment of the freight, feed, and yardage charges. In addition to the formal requirements of registration and the filing of a tariff, the Packers and Stockyards Act, 1921, as amended, requires each market agency to give a bond covering the faithful and prompt remittance of proceeds of sale of livestock, and the prompt and faithful execution of orders for the purchase thereof and the payment for such purchases. The maintenance of these bonds necessitates a small amount of capital.

81. By far the greater part of the service rendered by respondents to their patrons comes not from the employment of property or money but the application by respondents and their more responsible employees of personal skill, judgment, and integrity. Such skill and, to a considerable extent, judgment result from the training and experience acquired by respondents and their more responsible employees in the course of that development whereby one who enters the business in youth as a yardboy or minor office employee grows into a salesman, proprietor, or supervising office employee. While general scholastic training is not unusual among respondents, the character of the business is such that one may become better fitted for the higher positions by entering the low positions requiring little, if any, previous experience, and learning the business while working up to the better places. The personnel of the business may be divided into those whose major work is performed among the livestock in the pens and alleys and those whose time principally is spent in the offices. The first of these usually enter the business as young men with a background of livestock experience on farms. Nearly always they begin as yardmen for the commission men, however, in some instances as yardmen or other employees of the stockyard company. As yardmen they work side by side with and as assistants of the salesmen. Through this association they acquire the skill requisite to beginning as salesmen. While still yardmen they are permitted, from time to time, to sell livestock under the supervision of the salesmen, and later to sell small consignments of less important grades and classes on their own responsibility. This leads them to the position of salesmen when a vacancy occurs in the sales force.
63 The salesmen come in personal contact with the patrons and acquire a personal following which may become sufficiently large to enable them to acquire a membership in the firm by which they are employed, or to establish a new firm of their own.

82. The method of advancement to the higher office positions is not dissimilar from that which has been described with respect to the employees who work in the yard. In neither instance, however, have the more responsible employees and proprietors always worked up in the particular firm with which they are presently associated. In some instances, of course, the requisite experience has been gained while associated with other commission firms at Kansas City or at other livestock markets or while employed by a stockyard company or engaged in some activity related to the marketing of livestock at public stockyards. However, the rule is that the personnel holding the more responsible positions have gained their knowledge as an incident of employment in lesser positions at salaries compensatory of the services performed in those positions.

## IX. Rates Charged by Respondents for Services Rendered

83. Respondents who were members of the Kansas City Live Stock Exchange filed to become effective on January 1, 1926, their tariff No. 2, setting forth all rates and charges for selling and purchasing livestock on the Kansas City market. Each of such respondents filed its separate supplement No. 3 to Tariff No. 2, effective January 1, 1930. This supplement contained rates and charges assessed by each respondent filing said supplement to cover the charges made for insurance on livestock in the yards. With this supplement there was filed Tariff No. 2 as modified by Supplement No. 2 thereto. Certain of the respondents, pursuant to provisions of Tariff No. 2, as amended by Supplement No. 2, filed their individual tariffs covering their rates and charges for purchasing livestock. On May 11, 1932, and prior to the issuance of the Acting Secretary's order of May 18, 1932, all respondent commission firms (i. e., those who sell livestock on a commission basis), and all the respondent order buyers except three filed severally a uniform tariff of rates and charges for selling and buying livestock to become effective on May 23, 1932. The two respondent cooperative commission firms filed schedules, effective on June 18, 1932, in conformity with the order of May 18, 1932.
64 These two cooperative agencies later filed schedules, effective on October 10, 1932, modofying somewhat their commission charges.

84. A summary of the tariffs of respondents, other than the cooperative market agencies, now in effect at the Kansas City market follows:

Selling Charges

| | Per head |
|---|---|
| **Cattle and Calves Arriving by Rail:** | |
| **Calves:** | |
| 1 to 20 head, average weight 400 lbs. or under | 30¢ |
| All over 20 head, average weight 400 lbs. or under | 25¢ |
| **Yearlings and Cattle:** | |
| 1 to 20 head, average weight 400 to 800 lbs | 60¢ |
| All over 20 head, average weight 400 to 800 lbs | 40¢ |
| **Cattle:** | |
| 1 to 20 head, average weight 800 lbs. and over | 70¢ |
| All over 20 head, average weight 800 lbs. and over | 60¢ |
| **Cattle and Calves Arriving by Truck:** | |
| **Calves:** | |
| 2 to 20 head, average 400 lbs. or under | 30¢ |
| All over 20 head, averaging 400 lbs. or under | 25¢ |
| **Yearlings and Cattle:** | |
| 2 to 20 head, averaging 400 to 800 lbs | 65¢ |
| All over 20 head, averaging 400 to 800 lbs | 45¢ |
| **Cattle:** | |
| 2 to 20 head, averaging over 800 lbs | 70¢ |
| All over 20 head, averaging over 800 lbs | 60¢ |

Minimum Charge for One Head:
Calves—40¢.
Cattle—80¢.
Hogs:
1 to 40 head, averaging over 130 lbs ..... 25¢
All over 40 head, averaging over 130 lbs ..... 10¢
1 to 50 head, averaging less than 130 lbs ..... 20¢
All over 50 head, averaging less than 130 lbs ..... 5¢
Minimum Charge for One Head ..... 35¢
Sheep or Goats Arriving by Rail:
For the first 120 head in each car ..... 10¢
Additional head over 120 to 160 head ..... 5¢
Each additional head over 160 head ..... 4¢
Sheep and Goats Arriving by Truck:
For each 300 head or part thereof:
1 to 10 head ..... 25¢
11 to 40 head ..... 20¢
41 to 60 head ..... 15¢
61 to 300 head ..... 4¢
Minimum Charge for One Head ..... 35¢

65 Buying Charges

Cattle and Calves Shipped out by Rail:
Cattle and Calves, 50¢ per head; minimum $12 a car; maximum $15.
Calves, 30¢ per head, with a maximum of $15 per car.
Cattle Trucked Out:
50¢ per head; maximum $15 for 22,000 lbs.
Cattle Shipped out for Slaughter, $15 a car.
Cattle trucked out for Slaughter, 50¢ a head, maximum $15 for 22,000 lbs.
Hogs:
Feeders and Stock Pigs:
Up to 50 head, 20¢ per head.
51 head and above, 5¢ per head.
Slaughter Hogs:
Up to 50 head, 20¢ per head.
51 head and above, 5¢ per head.
Sheep or Goats Shipped out by Rail:
$12 single deck; $16 double deck.
Sheep or Goats Driven or Hauled out:
Up to 125 head, 20¢ per head; maximum $12.
Above 125 head, 15¢ per head additional; maximum $16 up to 250 head:

A summary of the tariffs of the respondent cooperative market agencies now in effect at the Kansas City market follows:

Selling Commissions

| Straight cars | Head | Minimum | | Maximum | |
|---|---|---|---|---|---|
| | | S. D. | D. D. | S. D. | D. D. |
| Cattle | $.60 | $13.00 | | $15.50 | |
| Calves | .30 | 13.00 | | 15.50 | $18.50 |
| Hogs | .20 | Up to 40 head. | | | |
| | .10 | Each additional head over 40. | | 12.00 | 16.00 |
| Sheep | .15 | $10.00 | | 17.00 | 17.00 |

66 Mixed Cars:
Cattle—65¢ per head. Not to exceed $15.50 for the cattle in a car.

Calves—32¢ per head. Not to exceed $15.50 for the calves in a single deck or $18.50 for the calves in a double-deck car.

Hogs—25¢ per head up to 40 head. 10¢ per each additional head over 40, not to exceed $12 for the hogs in a single-deck car, or $16 for the hogs in a double-deck car.

Sheep—15¢ per head. Not to exceed $12 for the sheep in a single deck or $17 for the sheep in a double deck.

Drive-Ins:

Cattle—65¢ per head with a maximum of $16.50 up to and including each 27 head.

Calves—On each 75 head of calves or fraction thereof in one consignment belonging to one owner the rates shall be determined as follows: 30¢ per head with a maximum charge of $16.50 up to and including 55 head; 25¢ per additional head above 55 with a maximum charge of $17.50 up to and including 75 head.

Hogs—25¢ per head up to 40 head, inclusive; 10¢ per each additional head with a maximum charge of $14 on any one consignment.

Sheep—On each 250 head of sheep or fraction thereof in one consignment belonging to one owner the rate shall be determined as follows: 20¢ per head with a maximum of $13.00 up to and including 125 head. 15¢ per additional head above 125 with a maximum charge of $18.00 up to and including each 250 head.

## Buying Commissions

Cattle or Calves:

Non-Slaughter:

(a) Shipped out—50¢ per head with a minimum of $12 and a maximum of $15 per car.

(b) Trucked or driven out—60¢ per head with a maximum of $16 and 22,000 pounds shall be considered as the maximum weight to be purchased at this maximum rate.

Slaughter:

(c) Shipped out—maximum $15 per car.

(d) Trucked or driven out—60¢ per head.

Hogs:

(e) Slaughter—$7.50 for single-deck car; $12 for double-deck car.

67 (f) Stock—$12 for single deck car; $20 for double deck car.

Driven or Hauled out:

25¢ per head up to 48 head.

On larger lots carload rates; 120 head to be considered a single deck load.

Sheep or Lambs:

(g) Sheep or lambs $12 per single deck and $16 per double deck car.

(h) Sheep or lambs driven or hauled out, 20¢ per head or a maximum of $12 up to and including 125 head. 15¢ per additional head above 125 with a maximum charge of $16 up to and including 250 head.

The foregoing are the basic rates but do not include all charges made. There are, in addition, provisions in respondents' tariffs for certain extra service charges, minimum charges on consignments, and special charges for selling the livestock of dealers. Besides these there are other miscellaneous provisions with respect to the application of the rates.

## X. Volume of Business Handled by the Respondents

85. The revenue producing business of the respondents consists of livestock sold and livestock purchased on a commission basis in the Kansas City Stockyard and to a comparatively slight degree at points away from Kansas City. The volume discussed under this heading relates to that portion of the business of the respondents transacted at the Kansas City market. Most of the respondents who sell livestock also purchase it on order and charge a commission therefor. Such purchasing is the principal business of certain respondents known as order buyers.

86. While in this order the unit principally used for rate-making purposes is the head of each respective species of livestock, simplicity and clarity in the statement of relative revenue producing volumes of the respective respondents require the use of some common denominator. This is for the reason that the commissions for the sale or purchase of a single head of cattle necessarily exceed to a considerable degree such commissions with respect to a hog or a sheep. The fact that a carload of hogs or sheep contains many more animals than a carload of cattle brings the commission revenue produced from it much more nearly on a level with that produced from a carload of cattle. Therefore, in this discussion of the revenue producing volume, the livestock of each species handled by each respective respondent commission firm is reduced to carload equivalents based upon the average number of animals per car of the particular species contained in the total number of straight cars of that species received by the particular respondent during the years 1929 and 1931. The following table sets forth the number of cars of livestock of all species received by each of the respondents:

## Volume Handled by Commission Men in 1929

| Firm No. | Number of cars |
|---|---|
| 33 | 114 |
| 41 | 131 |
| 37 | 162 |
| 72 | 165 |
| 66 | 178 |
| 80 | 277 |
| 86 | 365 |
| 85 | 424 |
| 78 | 449 |
| 79 | 449 |
| 11 | 456 |
| 43 | 492 |
| 74 | 499 |
| 31 | 512 |
| 67 | 555 |
| 1 | 596 |
| 61 | 611 |
| 76 | 612 |
| 6 | 642 |
| 17 | 656 |
| 20 | 805 |
| 15 | 829 |
| 8 | 854 |
| 23 | 871 |
| 5 | 879 |
| 30 | 950 |
| 60 | 1,000 |
| 77 | 1,022 |
| 44 | 1,039 |
| 16 | 1,204 |
| 75 | 1,208 |
| 29 | 1,285 |
| 4 | 1,302 |
| 62 | 1,306 |
| 48 | 1,367 |
| 7 | 1,382 |
| 70 | 1,400 |
| 55 | 1,441 |
| 52 | 1,463 |
| 53 | 1,583 |
| 65 | 1,625 |
| 26 | 1,736 |
| 56 | 1,775 |
| 68 | 1,838 |
| 34 | 1,894 |
| 28 | 1,930 |
| 14 | 2,124 |
| 25 | 2,147 |
| 42 | 2,288 |
| 18 | 2,381 |
| 12 | 2,958 |
| 83 | 2,980 |
| 71 | 3,117 |
| 13 | 3,343 |
| 84 | 3,541 |
| 51 | 3,786 |
| 73 | 4,051 |
| 35 | 4,394 |
| 10 | 4,913 |
| 36 | 4,995 |
| 82 | 5,415 |
| 46 | 7,553 |
| 54 | 8,158 |
| 63 | 8,577 |
| 59 | 8,778 |

Of these 65 firms listed above, 11 firms handled over 50 percent and 25 firms handled over 75 percent of business received by all.

69 Volume Handled by Order Buyers in 1929

| Firm No. | Number of cars |
|---|---|
| 49 | 11 |
| 47 | 34 |
| 24 | 75 |
| 58 | 79 |
| 40 | 102 |
| 69 | 203 |
| 39 | 446 |
| 3 | 480 |
| 38 | 947 |
| 21 | 1,124 |
| 32 | 1,369 |
| 81 | 1,978 |
| 64 | 2,771 |
| 57 | 3,309 |

## Volume Handled by Commission Men in 1931

| Firm No. | Number of cars |
|---|---|
| 37 | 67 |
| 33 | 72 |
| 72 | 88 |
| 67 | 91 |
| 88 | 99 |
| 11 | 106 |
| 66 | 112 |
| 1 | 257 |
| 74 | 314 |
| 9 | 364 |
| 79 | 381 |
| 78 | 421 |
| 76 | 424 |
| 61 | 425 |
| 87 | 432 |
| 17 | 446 |
| 19 | 447 |
| 6 | 605 |
| 15 | 702 |
| 43 | 785 |
| 30 | 814 |
| 52 | 820 |
| 5 | 857 |
| 75 | 872 |
| 60 | 905 |
| 77 | 906 |
| 29 | 962 |
| 16 | 988 |
| 20 | 1,039 |
| 7 | 1,067 |
| 26 | 1,164 |
| 23 | 1,239 |
| 4 | 1,244 |
| 44 | 1,261 |
| 56 | 1,263 |
| 62 | 1,269 |
| 53 | 1,297 |
| 65 | 1,372 |
| 70 | 1,382 |
| 48 | 1,421 |
| 14 | 1,641 |
| 34 | 1,984 |
| 25 | 1,999 |
| 42 | 2,022 |
| 18 | 2,092 |
| 55 | 2,219 |
| 71 | 2,234 |
| 35 | 2,418 |
| 12 | 2,450 |
| 13 | 2,475 |
| 73 | 2,936 |
| 51 | 2,976 |
| 84 | 3,021 |
| 82 | 3,741 |
| 83 | 4,130 |
| 36 | 4,996 |
| 46 | 5,641 |
| 10 | 5,699 |
| 33 | 6,009 |
| 59 | 7,022 |
| 54 | 8,544 |

Of the 61 firms listed above, 11 firms handled over 50 percent and 23 firms handled over 75 percent of the business received by all.

70 Volume Handled by Order Buyers in 1931

| Firm No. | Number of cars |
|---|---|
| 101 | 3,417 |
| 102 | 2,103 |
| 103 | 892 |
| 104 | 289 |
| 105 | 99 |
| 106 | 618 |
| 107 | 570 |

## XI. Gross Revenues

87. The respondent commission firms vary among themselves in the amount of gross revenues received from the sale of livestock consigned to them. These differences are due, for the most part, to variation in the volume of livestock received by them. Some of them, however, are attributable to a lack of uniformity in the character of business received. The livestock consigned to some firms may run heavily to one species and grade and that of another to another species and grade.

88. The following tables show for each firm the gross selling and buying commissions received from Tariff No. 2 in 1929 and in 1931:

## Commission Men

### 1929

| Firm No. | Amount |
|---|---|
| 33 | $1,943.52 |
| 41 | 2,228.05 |
| 72 | 3,021.40 |
| 37 | 3,115.05 |
| 66 | 3,326.40 |
| 80 | 4,658.92 |
| 86 | 6,386.20 |
| 85 | 7,023.30 |
| 11 | 7,224.28 |
| 79 | 8,294.75 |
| 78 | 8,368.25 |
| 74 | 8,523.07 |
| 67 | 9,547.92 |
| 31 | 9,697.15 |
| 61 | 10,187.30 |
| 1 | 10,317.35 |
| 76 | 10,908.58 |
| 43 | 11,246.92 |
| 6 | 11,564.97 |
| 17 | 12,195.40 |
| 23 | 14,993.86 |
| 20 | 15,271.95 |
| 8 | 15,603.20 |
| 15 | 17,024.20 |
| 5 | 17,310.69 |
| 77 | 17,657.03 |
| 30 | 17,971.15 |
| 60 | 19,297.77 |
| 75 | 20,710.71 |
| 16 | 22,421.33 |
| 62 | 23,139.60 |
| 4 | 23,171.64 |
| 29 | 23,804.71 |
| 44 | 25,014.27 |
| 48 | 25,910.35 |
| 52 | 26,038.80 |
| 7 | 26,481.24 |
| 55 | 26,770.90 |
| 70 | 27,154.97 |
| 53 | 28,775.67 |
| 56 | 30,627.34 |
| 65 | 31,275.50 |
| 26 | 31,517.40 |
| 68 | 31,603.26 |
| 34 | 31,992.53 |
| 28 | 34,325.90 |
| 14 | 37,534.95 |
| 25 | 38,382.32 |
| 18 | 42,351.14 |
| 42 | 43,228.85 |
| 83 | 50,133.21 |
| 12 | 52,653.11 |
| 71 | 53,301.19 |
| 13 | 61,483.65 |
| 84 | 61,984.59 |
| 51 | 65,065.77 |
| 73 | 72,448.32 |
| 35 | 78,374.95 |
| 10 | 90,759.27 |
| 82 | 94,938.17 |
| 36 | 118,172.84 |
| 46 | 124,217.91 |
| 63 | 148,516.86 |
| 54 | 148,669.21 |
| 59 | 155,381.93 |
| | $2,313,442.99 |

### 1931

| Firm No. | Amount |
|---|---|
| 37 | $1,199.90 |
| 33 | 1,522.95 |
| 72 | 1,695.05 |
| 88 | 1,832.75 |
| 11 | 1,845.15 |
| 66 | 1,983.00 |
| 67 | 2,167.55 |
| 1 | 3,600.28 |
| 9 | 5,687.96 |
| 74 | 5,923.11 |
| 79 | 7,446.58 |
| 78 | 7,563.75 |
| 61 | 7,718.13 |
| 76 | 8,097.73 |
| 19 | 8,135.30 |
| 17 | 8,421.15 |
| 87 | 8,883.96 |
| 6 | 11,688.49 |
| 52 | 14,781.04 |
| 15 | 14,911.27 |
| 30 | 15,428.75 |
| 77 | 15,927.86 |
| 75 | 16,274.98 |
| 60 | 17,078.82 |
| 43 | 17,419.88 |
| 5 | 17,556.01 |
| 29 | 18,286.82 |
| 16 | 18,837.50 |
| 20 | 19,581.50 |
| 7 | 20,078.27 |
| 23 | 20,792.66 |
| 26 | 21,807.77 |

71

| Firm No. | Amount | Firm No. | Amount |
|---|---|---|---|
| 4 | 22, 336. 53 | 12 | 45, 068. 81 |
| 56 | 23, 193. 08 | 13 | 47, 563. 60 |
| 62 | 23, 488. 44 | 73 | 51, 233. 80 |
| 53 | 23, 881. 88 | 84 | 52, 999. 55 |
| 65 | 25, 643. 59 | 51 | 54, 703. 22 |
| 70 | 26, 391. 90 | 82 | 67, 812. 70 |
| 48 | 27, 216. 03 | 83 | 68, 677. 60 |
| 44 | 27, 679. 43 | 46 | 91, 216. 54 |
| 34 | 29, 041. 10 | 36 | 99, 769. 35 |
| 14 | 32, 208. 87 | 10 | 102, 078. 98 |
| 25 | 36, 280. 93 | 63 | 104, 993. 75 |
| 18 | 37, 283. 65 | 59 | 126, 036. 06 |
| 42 | 39, 296. 66 | 54 | 154, 137. 19 |
| 55 | 40, 949. 18 | | |
| 71 | 41, 474. 09 | | $1, 911, 837. 81 |
| 35 | 45, 007. 41 | | |

72 Of the 65 firms listed for 1929, 11 firms received over 50 per cent of the 1929 revenues; 26 firms received over 75 per cent of these revenues. Of the 61 firms listed for the year 1931, 11 firms received over 50 per cent of the revenues for that year; 24 firms received over 75 per cent of the revenues of that year.

## XII. Methods Used by Respondents in Getting and Maintaining Business

89. The respondents employ many different methods in their attempts to get and maintain volume of business. They vary somewhat in their opinions as to the relative value of the different business getting and maintaining activities. They are practically unanimous, however, in the view that the most important factor is the rendering of the highest class of service. It is their opinion that a satisfied customer is a firm's best advertisement. Most of the respondent firms send out market letters periodically. These vary in frequency, size, and content. They usually contain information about general market conditions and prospects for the future, and give an account of some outstanding sale made by the issuing firm. Frequently matters of general interest to livestock producers are incorporated in these market letters. In addition to these, some of the firms get out circulars or cards giving suggestions about sorting and grading and methods of feeding and loading livestock. Those respondents who are members of the Live Stock Exchange are prohibited by its rules from giving presents or gifts in consideration of past or future business. This rule does not preclude the giving of articles, such as lead pencils, memorandum books, and other inexpensive advertising novelties.

90. Some of the respondents advertise in livestock journals and in the local papers in the territory from which they are accustomed to receive livestock. A local livestock market paper is published at the Kansas City market. Prior to January 1, 1930, it was the custom of many of the respondents to give free subscriptions to

this paper to some of their customers. On January 1, 1930, the respondents who were members of the Exchange discontinued this custom under a rule of the Exchange which became effective on a sliding scale basis within a period of six months. In lieu
73 of this practice, the Exchange began a radio broadcast service for the maintenance of which each member is charged 5¢ per car on the livestock handled. This radio broadcast is in the nature of a joint advertising venture on behalf of Exchange members.

91. Livestock salesmen carry on a considerable volume of correspondence with their customers and thus maintain contacts regarded as so necessary in the commission business. Most of the firms keep a list of customers and prospective customers. In addition to answering inquiries made by customers for market information, some of the firms at such times as they may deem suitable send letters dealing with market conditions which they consider of interest to their customers.

92. Respondents frequently entertain their customers, but a rule of the Exchange prohibits the giving of free meals in the West Bottoms, which is that part of the central industrial district of Kansas City in which the stockyard is located. Outside of this restriction the amount expended for entertainment is limited only by what each firm may deem expedient in its own case. Throughout the course of the year there are meetings and conventions of producers held in the trade territory of the Kansas City market. It has become customary for many of the respondents to send representatives to these meetings. Attendance thereon affords an opportunity to meet and talk with the producers of livestock. In addition, respondents make special trips to the country for the purpose of soliciting business. Those respondents who are members of the Exchange are prohibited by its rules from employing traveling or livestock solicitors. Only individual bona fide stockholders of corporations and salesmen or buyers of livestock on the Kansas City market, regularly employed in the commission business at Kansas City, may solicit business for the market. Such persons cannot remain in the country on a soliciting trip more than 15 days in each month, subject, however, to certain exceptions in certain stated regions.

93. In an effort to get business many of the respondents have undertaken the rendition of definite services incident to the marketing of livestock, but not immediately associated with the service of buying and selling livestock on a commission basis at the Kansas City market. One of these activities is commonly
74 referred to as "appraisal" or "inspection" work. Some of the shippers, those usually having more than a carload of livestock to be marketed, request members of respondent firms, or their salesmen, to come to the country and look at their livestock.

The object of the shipper in requesting this service is to get the opinion of the salesman as to whether the livestock is in condition to be marketed to best advantage and about what price it may be expected to bring. Frequently on such visits the salesman assists the producer in sorting his livestock and in loading it for shipment. A single shipper sometimes requests this service of more than one commission firm in order to get the benefit of the opinions of more than one salesman. These appraisal or inspection trips are made either by train or by automobile. In nearby territory it is usually done by automobile. These trips are made at the expense of the respondent firms. Inasmuch as this is a free service and respondent firms encourage shippers to avail themselves of it, it is increasing.

94. Several sheep and cattle feeding yards are located near Kansas City, to which some shippers send their cattle and sheep to be held and fed anticipatory to marketing it either at such feed yards or at the Kansas City stockyard or some other livestock market. It is customary for the owners of such livestock to ask the commission firms to look after it. The owners often accompany it. Respondents make trips, sometimes with the owners, to these feeding yards to look over the livestock and render sundry services in connection with it, such as sorting, supervising and feeding it and arranging for shearing of sheep and the selling of the wool, if shearing is deemed necessary. No separate charge is made for these services. At the time of the second hearing in this case cattle and sheep were being bought and sold at some of these neighboring feeding yards.

95. The leasing of pasture land for the use of those customers who have cattle to graze has become an important activity for some of the respondent firms. The Kansas City market is near the Flint Hill section of Kansas and the Osage country of Oklahoma, which are extensive grazing areas. Many stockmen throughout the Southwest request their commission firms at the Kansas City market to obtain pasture for them in these grazing regions. The respondent firms that render this service make
75 it a point to keep informed in regard to the available pastures, in order that ready contact may be made with the owners of these grazing lands. A commission firm rendering this service goes out to inspect the pastures in order to determine the condition of the grass, the water supply and the character of the fences, and then reports to the customer. The commission firm also furnishes a form of pasturage contract, which is used when the owner leases the land. After the lease has been made and the owner has shipped this livestock to the pastures, a representative of the commission firm is usually present when the cattle arrive in order to look after the interests of the owner. While the cattle are grazing frequent trips are made by the interested com-

mission firm for the purpose of inspecting the cattle, the condition of the grass, and the supply of water. Another inspection of the cattle generally is made before shipment to market. No separate charge is made for this service, which is rendered in the hope that the commission firm rendering it will receive the livestock for sale on the Kansas City market. It sometimes happens that this livestock is shipped elsewhere or, if to the Kansas City market, to some other firm than the one which has rendered the service.

96. Some of the respondent firms engage in making loans on livestock. Such firms either loan their own money or negotiate loans through a bank. They may act as the endorser of livestock paper. In those cases in which they endorse the paper, the interest charged is about one percent above that which prevails in the market. This represents a charge by the commission firm for its services and for underwriting the risk involved. In connection with making loans on livestock it is usually necessary to make an inspection of it. Most of the loans are made at the time the livestock is purchased at the market. In this event the work of inspection does not involve a great deal of time or expense since the details are handled by the regular office force. The respondents do not contend that the livestock loan business is a part of the commission business, but they do contend that it is a business-getting venture and that the expense incurred in connection with it is one properly incurred in the conduct of the commission business.

97. The business-getting efforts of those who buy livestock on order are not so varied. They advertise in papers
76 to some extent and make occasional trips to call upon their customers. Contact by telephone and telegraph is the principal means used by them in getting and maintaining their volume of business.

## XIII. Joint Activities of the Respondents

98. With the exception of the two cooperative commission firms and several individual order buyers operating on a small scale, respondent firms maintain the Kansas City Livestock Exchange, which is a voluntary organization not conducted for profit. The object of this association is to maintain uniform customs and certain standards of trade ethics, more particularly outlined in the rules formulated by it. All members of the Exchange are required to observe these uniform rules. The membership of the Exchange is composed of those who engage in the commission business at the market and such others as were once engaged in such business and who have become inactive but have retained their memberships.

99. There exists also an arrangement between the members of the Exchange and the respondent cooperative firms known as a trade-practice agreement, whereby the latter two firms, by meeting certain conditions, such as the giving of bonds and agreeing to abide by certain disciplinary measures, can avail themselves of certain facilities maintained by the Exchange. The Exchange is registered as a market agency engaged in rendering certain miscellaneous services, including particularly hog inspection and dockage. It is not a respondent in this proceeding and the reasonableness of its rates for services is not a subject of inquiry here.

100. The Exchange maintains a system of hog inspection and dockage whereby it employs men to inspect these animals for conditions of health and for certain physical conditions which may exist in some hogs, for which a deduction from the agreed price will be made. The rules of the Exchange definitely prescribe the procedure. If there is dissatisfaction with the docker's decision, an appeal may be taken to the chief inspector, whose decision is final unless an arbitration is called for. The person who calls the arbitration is charged $1.50. A charge of 20¢ is made on each car of hogs arriving at the market for sale, and a prorata charge is made on truck receipts of hogs to cover the expenses of hog inspection and dockage. This charge is deducted from the proceeds of sale of hogs.

77

101. The Exchange maintains a clearing house which serves as a central office for the convenient handling of bills rendered and accounts collected. Each firm pays for the use of this facility according to the volume of business handled. The cooperative firms also avail themselves of this service.

102. The Exchange procures and maintains a policy of insurance, protecting livestock against fire while it is in the yard. One-half the premium is deducted from the proceeds of sale of livestock. Traders, packers, and order buyers also make a contribution to a fund used to maintain this insurance. Those agencies which are not members of the Exchange maintain their individual insurance policies and do not enjoy the protection of the blanket policy carried by the Exchange for its members. The collections by the Exchange exceed the premiums, and this excess goes into the general fund.

103. The Exchange has an agricultural development fund. Members are assessed 10¢ per car on in-bound shipments, 6¢ per car on livestock bought on order, and 6¢ per car on livestock cleared through brokers. This fund is used in general promotional work, such as livestock sanitation, boys' and girls' club work and fairs.

104. On March 1, 1930, the Exchange began making an assessment of 5¢ on each in-bound car of livestock sold, to support the radio broadcasting conducted by it. This charge is made against

those firms which are members of the Exchange. The Exchange also assesses each firm 2¢ per car on all in-bound rail receipts to maintain its transportation department. The purpose of this department is to look after train service and the relationship of freight rates as between Kansas City and other markets. The respondent cooperative firms are assessed for this purpose, pursuant to the trade practice agreement.

105. The Exchange charges $3 per month per membership for the purpose of building up a fund to retire the certificates of membership of deceased members. This is governed by the rules of the Exchange. The Exchange has organized an independ-
78 ent association, composed of members of the Exchange, known as the Kansas City Live Stock Exchange Employees Association. It has the same officers as the Exchange and is founded and operated under the insurance laws of New York. Contributions to this are made on an individual basis, and the expenses of the association are borne by assessments against individual members.

## XIV. Risks Incurred in the Commission Business

106. The record in this proceeding shows the character of the risks to which the respondents are subject in the conduct of their business. These risks are of two general types, namely, those which result in losses of sufficient frequency and definiteness to make it possible for insurance companies to calculate on an actuarial basis the premiums necessary to be charged and those which occur so infrequently and are so indefinite in character as to make this impossible. The former class of risks is insurable, while the latter is not. Insurance premiums paid enter into the expenses of the respondents. The losses incurred on account of uninsurable risks constitute items to be provided for in the reasonable profit allowable over and above reasonable expenses. The respondents claim that these risks affect both their revenues and their expenses. Among those which affect their revenues are the possibility of decline in the production of livestock within the trade territory of Kansas City and the growth of direct buying by packers in that area. Among those risks affecting unfavorably the expenses of conducting their business the respondents enumerated the following: their guaranty against defects in title to livestock sold by them; errors entering into accounting processes; failure of producers to make payment; losses through litigation on account of bank failures; freight undercharges; sales of diseased and defective livestock; loss or damage to livestock while in their custody; public liability; liability to employees; and loss of property through fire. Against insurable hazards most of the respondents carry some insurance but there are others who choose to carry this risk themselves.

107. The respondents are forced by the conditions which surround the conduct of their businesses to carry some of the risks themselves. While the livestock commission business is the-
79 oretically a cash business, it frequently happens that respondents make remittances before they have received payment for livestock sold. If the buyer is a regularly registered agency at the market, other than a packer buyer, the payment for the livestock is guaranteed under the buyer's bond. If, however, the buyer is not bonded, there is an element of risk in a sale to such a person in that the purchaser for some reason may not settle for the livestock purchased. It sometimes happens in connection with sales of livestock to a countryman who gives his check or in case of a sale to those who purchase on order that the commission man turns over to the owner the proceeds of sale before collection is made from the purchaser. Besides this, there is also an element of risk involved in the remittance of proceeds to the shipper in that litigation may arise in connection with the failure of a bank in which proceeds have been deposited. Other risks which may be classed as uninsurable are those arising from bad debts, errors, and adjustments which cannot be avoided even by reasonable precaution, losses on account of making loans, and other items of like character. Bad debts are usually incurred in connection with loans made or credit given to those for whom purchases are made, or the honoring of drafts drawn by shippers before livestock has been sold, the proceeds of the sale of which do not equal the amount of the draft. There is also the possibility of injury to livestock while in the custody of the commission firms resulting from the negligence of the commission firm or its employees. Inasmuch, however, as each commission firm endeavors to render the highest class of service and handle livestock in the most humane manner, the risk of loss from this source is practically negligible.

## XV. Economic Changes Since the Year 1929

108. The rehearing was granted in this proceeding upon the ground alleged by the majority of the respondents in their petitions therefor, namely, that changed economic conditions since the original test year, 1929, had rendered the experiences of that year insufficient as a basis for the determination of reasonable rates. It becomes pertinent, therefore, to note herein the changes shown of record and noticeable under the doctrine of Atchison, Topeka, and Santa Fe Railway Company v. U. S., 284 U. S. 248, which have occurred between the year 1929 and the close of the record in the last yearing in this proceeding. They may be dis-
80 cussed as three general classes, namely (1) general changes affecting the country as a whole; (2) general changes affect-

ing the livestock industry; and (3) particular changes affecting respondents' businesses and revenues.

109. The general economic changes are, in brief, that beginning in the year 1929 the business life of the country has descended from one of the highest levels of activity and prosperity ever known to one of the most severe depressions in our entire national experience. Values of tangible property and of investments, as well as incomes, salaries, wages, and commodity prices have descended to levels lower than were thought in 1929 hardly to be possible.

110. The effect of the general depression was felt severely in the livestock producing industry. Whereas in December 1929 the monthly average prices at Kansas City of slaughter steers ranged from $9 to $14 per 100 lbs.; of hogs from $7 to $9; and of slaughter lambs from $9 to $12; depending upon weight and grade, the comparable prices for December 1931 were: slaughter steers, $3 to $10; hogs, $3 to $4; and slaughter lambs, $3 to $5. It was testified by some of the respondents that at times since the year 1929 the livestock market at Kansas City was so demoralized by lack of demand and consequent low prices that they advised their patrons to withhold shipments of livestock even though so doing tended to decrease the respondents' own revenues.

111. In its effect on the prosperity of the respondents' businesses the general depression manifested itself principally in a decline in the volumes of livestock received by them for sale or bought by them on commission. As illustrative of this, their total revenue producing fresh receipts of livestock were for 1929: cattle 1,743,165; calves 273,577; hogs 2,140,170; and sheep 1,673,705 head; while for 1931 they were: cattle 1,580,290; calves 236,727; hogs 1,102,425; and sheep 1,817,611 head. There were, of course, corresponding declines in revenues, except in the case of sheep where the increased volume produced a greater revenue. The record having been closed in November 1932, receipts for the entire period of that year are not available. However, those for the first seven months thereof were not quite as great as during the similar period of 1931.

112. In the year 1932, partly, at least, as a result of the general depression and the unfavorable economic condition
81 of their patrons' businesses, respondents reduced their rates to some extent.

113. Notwithstanding the unfavorable business conditions and lowered receipts in 1931, as compared with 1929, few of respondent firms operating in both of those years showed any substantial reduction of personnel in the former as compared with the latter. Also, few firms made any substantial reduction in salaries and wages sufficiently early in the year 1931 materially to affect their cost of doing business as shown in the audits covering that year.

Such decreases as were made took place largely in the latter part of the year 1931 and in the year 1932. The general impression gained from the record is, however, that respondents, in the face of almost universal lower levels in the United States, are attempting to maintain their personnel and the salaries thereof at the levels obtaining in the more prosperous year, 1929. This necessarily has a depressing effect upon the net moneys available to the owners of these businesses which may be designated "net owner incomes."

## XVI. Principles Governing Determination of Reasonable Commission Rates

114. The Packers and Stockyards Act provides that if, after investigation, the Secretary of Agriculture finds commission rates in effect at a livestock market to be unjust, unreasonable, or discriminatory, he shall prescribe rates that are just, reasonable, and nondiscriminatory, or the maximum or minimum rates, or the maximum and minimum rates, which are just, reasonable, and nondiscriminatory. In arriving at such a schedule it is necessary to adopt a guide to reasonableness. The guide adopted in this case is that under ordinary conditions as they prevail on the Kansas City market, a schedule of rates should be high enough to produce sufficient gross revenues to pay all reasonable costs and a reasonable compensation for management and risk, that is, a reasonable profit, to the owner or owners of any firm which receives enough livestock to enable it — handle its business in a reasonably efficient and economic manner. This principle was followed in the Omaha Commission Rate Case, and was approved by the Supreme Court of the United States in the case of Tagg Bros. and Moorhead, et al. vs. United States (280 U. S. 420). It becomes necessary, therefore, in following this guide to determine the reasonable costs to the respondents of handling
82 each species of livestock.

## XVII. Cost Occasioning Factors

115. There is a relationship between those factors which occasion work for respondents and their employees and the costs to respondents of rendering the services for which they charge the rates. This relationship, however, is not so direct as to bring about an increase in cost whenever an increase in work arises. This is due to the fact that in many instances the major functions of those engaged in performing the activities of respondents can be carried on only at certain times. For instance, a salesman cannot sell livestock except when the market is open and more or less active, notwithstanding the volume of livestock which he has for sale. On the other hand, the type of men who make good

salesmen would hardly be content to accept less salaries in consideration of short hours. They demand and get good pay and are willing to return therefore a reasonable days' and weeks' service. Therefore, the fact that, prior to the selling hours they assist in the yards and that, during the last one or two days of the week they go to the country to appraise livestock and solicit business do not increase the respondents' expenses for salaries. Therefore, in the distribution of costs hereinafter made to functional accounts, the services of a salesman, for instance, are not divided as between selling, yarding, office work, and business getting and maintaining, but are considered as being covered by the reasonable allowance for salesmanship. The same is true in principle with respect to the salaries of other workers such as yardmen and those who are engaged in the office.

116. The cost occasioning factors will as a rule be found to consist of those activities which require the employment of a personnel in the handling of a given number of animals. For instance, since each consignment, however large or small it may be, must be yarded, sold, weighed, and accounted for as a separate unit, the greater the number of consignments contained in each hundred thousand of animals handled by a respondent firm the greater will be the personnel and resultant cost required for such handling. To a less degree the same is true with respect to the number of drafts and of owners and of account sales to the hundred thousand of animals handled. The accompanying table,
considered in conjunction with the unit cost per firm of
83 handling the various species of livestock according to modes
of arrival, is an illustration of these facts. The accountants' analyses hereinafter described indicate that the greater unit costs attach to livestock coming in with species mixed in a car or in motor trucks or received as so-called "seconds" in the yard and the lesser unit costs attach to the livestock which arrives in railroad cars without species being mixed. This table shows that in the case of cattle, for instance, those coming by straight rail, single ownership, average for the market as a whole 45 head per owner and 45 head per account sale, which is practically equivalent to per consignment, and 11 head per draft, whereas the mixed rail, single ownership, average only 33 head per owner and 30 head per account sale and approximately 3 head per draft; the drive-ins average 4 head per account sale and 4 head per owner and 2 head per draft; and the seconds average 8 head per account sale and 8 head per owner and less than 4 head per draft. The differences in unit costs hereinbefore discussed have occasioned classifications in rates based on the mode of arrival, but both the testimony of some of the respondents and the conclusions to be drawn from the analyses of the accountants lead to

the further conclusion that costs do not depend upon the vehicle in which the livestock was transported to market or the company it kept on the road, but rather on the number of head contained in, the number of owners to, and the number of drafts necessary in each consignment. The table here discussed follows:

## XVIII. Preparation for the Determination of Costs

117. In preparation for the determination of costs in this matter the Government caused to be made an audit of the business done by each respective respondent firm (including corporate and individual respondents) during the year 1929 and, when a rehearing had been granted, caused to be made similar audits covering the year 1931. These audits were made by trained and experienced accountants, under the supervision of a chief accountant, from the books and records of the respondents. In each instance the year chosen was the last complete calendar year preceding the hearing. The marketing of livestock at Kansas City is such as to render the full calendar year the fairest accounting period. One, among other reasons for this, is that the calendar year presents a complete cycle of marketing of the various classes
84 and grades of livestock. The factors which may occasion light runs at one period of the year are apt to cause correspondingly heavy receipts at another.

118. While in preparation for each hearing it was only practicable to audit the businesses for one calendar year, much information concerning the conditions which affect respondents' businesses and covering a period of many years was obtained and placed in the record. Particularly among these was a showing of the volume of livestock received at the Kansas City stockyard year by year from 1882 to 1931, both inclusive, and month by month from January to September, both inclusive, of the year 1932.

119. In recognition of the fact that the rates prescribed will affect the respondent firms severally and not collectively, it is considered that the several experiences of more than 60 firms, occurring under conditions similar to those which may be expected to prevail when the rates have gone into effect, is more pertinent than would be the experiences of one firm over a number of past years, the circumstances and conditions of many of which long ago have ceased to exist. The audits so prepared were accepted by the respondents as constituting true reflections of the facts disclosed by their books and records of account for the periods covered, though they contended that some items of cost incurred in their business were not shown on their books.

120. From those audits, the Government's chief accountant prepared for the year 1929 a functional cost analysis on a unit basis;

that is to say, the audits and auxiliary data indicated the allocation directly to each species of livestock of a large percentage of the total cost incurred by each respondent firm. The remaining cost, which could not be allocated directly, was distributed by the accountant on what he considered appropriate bases.

121. He made a similar analysis covering the year 1931 and for that year also a further analysis, commonly called a "differential study," whereby he broke down the total cost per function and per species and distributed it over the various modes of arrival within each species for each particular firm, to the end that he might discover, for instance, how much it cost a particular firm to yard a hog arriving by motor truck as distinguished from the cost to the same firm for yarding a hog which came in by rail.

| 85 | Straight rail | | Mixed—Cattle and calves | | Mixed—All species | | Drive-Ins | Seconds | Buying | |
|---|---|---|---|---|---|---|---|---|---|---|
| | S. O. | P. O. | S. O. | P. O. | S. O. | P. O. | | | Rail | Drive-outs |
| Cattle: | | | | | | | | | | |
| Cars | 31,231 | 6,112 | 5,954 | 3,751 | 543 | 401 | ------- | ------- | 14,275 | ------- |
| Decks | 31,231 | 6,112 | 5,954 | 3,751 | 543 | 401 | ------- | ------- | 14,275 | ------- |
| Head | 867,253 | 180,568 | 197,080 | 122,531 | 17,136 | 12,958 | 182,764 | 105,769 | 401,041 | 24,908 |
| Drafts | 72,509 | 34,309 | 45,917 | 40,661 | 5,851 | 6,527 | 89,737 | 31,780 | 43,236 | 5,963 |
| Owners | 18,865 | 10,876 | 2,630 | 8,810 | [illegible]6 | 2,779 | 45,441 | 13,624 | 10,423 | 2,365 |
| Account sales | 18,932 | 9,950 | 2,650 | 7,284 | 9 | 2,032 | 45,441 | 13,024 | 10,423 | 2,365 |
| Head per draft | 11.96 | 5.26 | 4.29 | 3.01 | 2.93 | 1.98 | 2.04 | 3.33 | 11.36 | 4.18 |
| Head per owner | 45.97 | 16.60 | 74.93 | 13.91 | 33.86 | 4.66 | 4.02 | 7.76 | 47.11 | 10.33 |
| Head per account sale | 45.81 | 18.15 | 74.37 | 16.82 | 33.67 | 6.38 | 4.02 | 7.76 | 47.11 | 10.53 |
| Calves: | | | | | | | | | | |
| Cars | 244 | 23 | 1,168 | 592 | 106 | 87 | ------- | ------- | 471 | ------- |
| Decks | 248 | 23 | 1,168 | 592 | 106 | 87 | ------- | ------- | 471 | ------- |
| Head | 14,035 | 1,228 | 73,170 | 36,604 | 6,885 | 5,896 | 98,911 | 14,987 | 28,726 | 4,319 |
| Drafts | 623 | 83 | 15,421 | 12,120 | 3,119 | 3,549 | 65,503 | 5,388 | 1,373 | 1,468 |
| Owners | 151 | 30 | 2,573 | 4,770 | 294 | 2,110 | 41,010 | 1,985 | 423 | 403 |
| Account sales | 161 | 26 | 2,591 | 4,109 | 295 | 1,311 | 41,010 | 1,986 | 423 | 403 |
| Head per draft | 22.52 | 14.79 | 4.74 | 3.02 | 2.21 | 1.66 | 1.51 | .83 | 20.92 | 2.94 |
| Head per owner | 92.95 | 40.93 | 28.43 | 7.67 | 23.42 | 2.79 | 2.41 | 7.55 | 67.91 | 10.72 |
| Head per account sale | 92.95 | 47.23 | 28.35 | 8.91 | 23.34 | 4.50 | 2.41 | 7.55 | 67.91 | 10.72 |
| Hogs: | | | | | | | | | | |
| Cars | 3,145 | 1,119 | ------- | ------- | 748 | 634 | ------- | ------- | 473 | ------- |
| Decks | 3,206 | 1,159 | ------- | ------- | 750 | 647 | ------- | ------- | 722 | ------- |
| Head | 235,335 | 83,875 | ------- | ------- | 55,671 | 49,388 | 678,156 | 84,673 | 65,579 | 23,526 |
| Drafts | 12,849 | 9,328 | ------- | ------- | 6,007 | 8,476 | 89,096 | 5,842 | 1,569 | 994 |
| Owners | 3,007 | 5,488 | ------- | ------- | 529 | 5,123 | 59,587 | 3,710 | 407 | 489 |
| Account sales | 3,006 | 4,969 | ------- | ------- | 531 | 4,072 | 59,587 | 3,710 | 407 | 489 |
| Head per draft | 18.32 | 8.99 | ------- | ------- | 9.26 | 5.83 | 7.61 | 14.49 | 41.80 | 23.67 |
| Head per owner | 78.26 | 15.28 | ------- | ------- | 105.24 | 9.64 | 11.38 | 22.82 | 161.12 | 48.11 |
| Head per account | 78.28 | 16.87 | ------- | ------- | 104.84 | 12.13 | 11.38 | 22.82 | 161.12 | 48.11 |
| Sheep: | | | | | | | | | | |
| Cars | 5,481 | 820 | ------- | ------- | 48 | 23 | ------- | ------- | 455 | ------- |
| Decks | 10,481 | 1,491 | ------- | ------- | 49 | 24 | ------- | ------- | 802 | ------- |
| Head | 1,371,805 | 192,452 | ------- | ------- | 6,481 | 3,399 | 243,474 | 2,154 | 113,335 | 8,906 |
| Drafts | 10,680 | 4,699 | ------- | ------- | 479 | 374 | 29,674 | 112 | 876 | 345 |
| Owners | 3,225 | 2,243 | ------- | ------- | 59 | 205 | 16,635 | 68 | 372 | 229 |
| Account sales | 3,221 | 1,627 | ------- | ------- | 59 | 133 | 16,626 | 68 | 372 | 229 |
| Head per draft | 128.44 | 40.95 | ------- | ------- | 13.53 | 9.09 | 8.20 | 19.23 | 129.37 | 25.81 |
| Head per owner | 425.37 | 85.80 | ------- | ------- | 109.84 | 16.58 | 14.64 | 31.67 | 304.66 | 38.89 |
| Head per account sale | 425.89 | 118.28 | ------- | ------- | 109.84 | 25.55 | 14.64 | 31.67 | 304.66 | 38.89 |

86 122. In preparation for both the first and the second hearing the great majority of the respondents employed a trained and experienced accountant who prepared for each of the years 1929 and 1931 analyses similar in purpose to those above described as having been made by the Government accountant, and based them on the same audits. At the first hearing the accountants for the Government and for the respondents, respectively, were in disagreement as to the bases to be used in making indirect allocations or distributions of costs, such as administrative and general expenses, but at the second hearing respondents' accountant, while not endorsing the bases employed by the Government's accountant, did not regard it as worth while to controvert them.

## XIX. Items Entering Into Costs

123. Each of the accountants, in making his analysis of the business of the respondents, established a classification of expenses and assigned to it certain items. The classifications are as follows:

| Government Accountant: | Respondents' Accountant: |
|---|---|
| Salaries. | Salaries and Wages. |
| Selling and Buying. | Selling and Buying. |
| Yarding. | Yarding. |
| Business Getting and Maintaining. | Business Getting and Maintaining. |
| Office. | Office. |
| Administrative. | General Supervision. |
| Expenses. | Expenses. |
| Yarding. | Yarding. |
| | Selling and Buying (Horse Expenses). |
| Office. | Office. |
| Business Getting and Maintaining. | Business Getting and Maintaining. |
| Administrative and General. | Administrative and General. |
| Risk. | Risk. |
| | Commissions paid (Split Com.).[1] |

[1] This item, "Commissions paid (Split Commissions)," is included by the Government accountant as a part of the item "Selling and Buying Salaries."

87

| | |
|---|---|
| Interest on Following Capital. | Interest on Following Capital. |
| Fixed Assets (including Exchange memberships). | Fixed Assets (including Exchange memberships). |
| Working Capital to cover: Operating Expenses | Working Capital to cover: Operating Expenses and Handling Sales and Purchases. |
| | Investment in Methods and Practices. |

124. It will be observed that with respect to the items of cost, as distinguished from the method of arriving at the amounts of those items, the two accountants were in substantial agreement, except that respondents' accountant includes an item for interest on working capital necessary to handle sales and purchases, and he also includes an item of interest on capital invested in methods and practices. Neither of these items is covered by the classification made by the Government accountant. Hereinafter, in determining reasonable costs, an allowance is made to cover each and every item common to the classifications of the two accountants; also, similarly, an allowance is made to cover interest on working capital necessary in handling sales and purchases. The methods and practices, the value of which is contended for by respondents as an element of capital, are classified by their accountant under three heads, namely, (1) mailing lists and customer records; (2) office methods, systems, etc., and (3) yard methods and practices.

125. The mailing lists and customer records comprise principally all the names and addresses of those who have patronized and are believed to be still in position to patronize the respective respondent firms who keep the lists. To a lesser extent they contain some names and addresses of those who have not yet patronized the firm keeping the list. These data are acquired and recorded as a part of the normal and usual conduct of respondents' businesses. They are kept on a card or some similar form of record. Such records constitute a part of the property of the respective respondents who keep them. Therefore, their respective
88 values, such as they may hereafter be found to be, are included as a part of respondents' invested capital.

126. The other matters listed as methods and practices constitute those common day-by-day routines used in the conduct of respondents' businesses, such, for instance, as the methods of yarding, sorting, selling, and weighing livestock in the yard and the practices of making out and transmitting account of sales to the patrons, remitting the proceeds of sale, and keeping records and other similar matters in the office. Respondents' theory is that if no such

routines had been used by any one anywhere and respondents were compelled to employ persons to work them out, costs would be incurred in the discovery of them and further costs in the learning of them by respondents and their employees. Their accountant has arrived at some $66,000 as the total of such costs. These are apportioned among the various firms he represents. The respondents contend that the amounts apportioned to their respective firms should be regarded for rate-making purposes as a part of the capital of such firms, interest on which, they say, should be included in the reasonable costs.

127. These items, namely, value of office methods and customs and value of yard methods and practices are not included in respondents' capital, a return of which is coverable into reasonable rates. The reasons for not including them are as follows:

128. They, like the common routines of everyday life generally, while very useful and practically indispensable, are not the property of anyone. They freely may be adopted and used by any who care to do so without the payment of any price or remuneration to any of the respondents in this proceeding. Knowledge of them is a part of the qualifications of respondents' various classes of workers, whether they be owners or employees. They are, in general, learned while the worker is engaged upon and performing other duties for which he is being adequately compensated. When, hereinafter, an allowance is made to cover the salaries of yardmen, salesmen, office workers, etc., it is not contemplated that it would be just or reasonable to cover into the rates such salaries to be paid to men who were not acquainted with the common routines necessary in the performance of their work.

89 XX. Reasonable Unit Costs Plus Reasonable Unit Profits To Be Covered Into Reasonable Commission Rates

129. There are more firms and a larger personnel on the Kansas City market than are necessary to dispose of shippers' livestock effectively. A smaller number of firms than are now engaged could handle the business more economically. The Packers and Stockyards Act does not clothe the Secretary of Agriculture with authority to determine how many firms would be required to handle the business properly or what specific firms should be engaged in business or whether some firms are unwisely continuing in business. The Act directs him to prescribe reasonable rates. In order to do this some reasonable standard must be adopted. That adopted herein has already been stated in paragraph 114. In applying this standard it is necessary for the rate maker to inform himself with respect to whether each of the respondent firms is conducting its business economically to the end that the schedule

of rates prescribed may not pass unnecessary expenses on to those who pay the rates.

130. Commission rate making is a matter of the exercise of well-informed judgment, guided by mathematical calculation. The importance of statistics and cost of operation of each of the respondents lies in the fact that they are a guide to judgment. In arriving at a reasonable allowance to cover the cost of separate functions, the experience of each firm is considered separately. The use of the mathematical average cost of all firms doing business, as a test of reasonableness of rates, would carry into the rates, through the aggregate used in arriving at the average, all the unreasonable and extravagant expenditures, if any, incurred under the rates already in existence. Moreover, the unit costs of many of the firms are high because the volume of business coming to the market is divided among too many firms and handled by an unnecessarily large personnel. To consider as reasonable the average of the unit costs so incurred would compel the maintenance, at the expense of the rate payer, of all who wish to engage in the business, even though the volume of business they can command be too small to warrant the organization necessary to handle it. In this connection, it is to be observed that while, for example, one salesman may be able to sell 30,000 head of cattle received by one firm, yet if the same volume be divided between two firms, two salesmen will be required. As a test of the reasonableness of rates, the adoption of the lowest costs incurred by the most economically conducted firm would result in a schedule so low as manifestly to be unreasonable as to some firms of normal efficiency. The adoption of the highest costs incurred by the least efficiently managed firms would result in a schedule so high as to be unfair to all shippers of livestock. This same situation obtains with respect to any functional item of expense incurred by any one firm. Since neither the average unit cost of all firms nor the experience of the most efficient firms, nor that of the most inefficient firms, can be taken as a guide to the establishment of rates, some other method of analysis must be adopted.

131. In general, the expenses incurred by commission firms fall into two classes: first, those which the conditions of the business tend to hold down, and, second, those which the conditions tend to increase. In arriving at a reasonable cost to be covered into rates in the case of those functions, the expenses of which are automatically held down, the costs as actually incurred by each of the firms should be considered and the reasonable cost arrived at, giving due consideration to the circumstances under which each of the respondents operates. In case of those costs which the conditions of the business tend to increase, such as the cost of salesmanship and the cost of advertising, expenses as actually

incurred by any firm or by all of the firms do not furnish an adequate guide to the reasonableness of such cost. In arriving at a reasonable unit cost on account of these functions some additional procedure of approach has to be adopted. That used is discussed hereinafter in those paragraphs wherein the reasonable allowance is determined. The various functional unit items of cost, the findings as to the reasonable allowance for the various functions and the reasoning employed in arriving at the findings are set forth in the following paragraphs.

## Salesmanship

132. An important item to be included in reasonable unit costs is a reasonable amount for salesmanship. This function is performed on the Kansas City market by owners of market agencies and by salesmen employed by them on a salary basis.
91 Each of the accountants found unit costs of this item per species of livestock and also according to the respective modes of arrival.

133. Inasmuch as the selling and buying of livestock requires greater skill and judgment than the performance of any other of respondent's functional activities, with the possible exception of management, the proportion of owners as distinguished from employees, engaged in this activity is great. In some firms such owners agreed upon salaries which should be set up on the books for each and paid, if the net result of operations made it possible so to do. In others the owners had merely drawing accounts with division of net owner incomes at the end of a year or some other accounting period. In still others the owners merely divided whatever net owner income happened to arise from the operation. By "net owner income" is meant moneys arising from the operation of the business and available for the personal use of the respective owners, regardless of whether it be considered as compensation for services rendered or profits arising from the ownership of the business or a combination of the two.

134. While the accountant for the Government used, in ascertaining the unit costs of salesmanship, the salaries, drawing accounts, and profits of owner salesmen, as well as the salaries of those who were employed, he neither attempted to pass upon the reasonableness of such salaries, drawing accounts, or profits of the owner-salesmen nor recommended the inclusion of those of the owners in the costs which are to be used as the basis of reasonable rates. In this proceeding it is not contended by anyone that these owner salaries, drawing accounts, or profits should be used as an element of costs. When, however, they are eliminated, and nothing substituted, it causes the salesmanship costs of so

many firms to appear extremely low or be absent altogether that no fair normal can be garnered from the unit costs of the remaining firms for this item. In these circumstances the question becomes one of determining the amounts to be substituted. The record in this proceeding suggests alternative methods. Respondents contend that there should be substituted an amount representing the personal value of each owner-worker as appraised by a committee selected by respondents. Government counsel argue that the unit cost of salesmanship should be
92 ascertained by relating a reasonable annual salary for a salesman to a reasonable year's performance expressed in terms of the units sold, that is, carloads or head, as the case may be, as was done in Docket 143, the Omaha commission rate case (see Tagg Bros. and Moorhead v. U. S., 280 U. S. 420) and in every commission rate order issued by the Secretary of Agriculture since that time.

135. In preparation for a hearing in 1929 and again prior to that of 1931, respondents had an appraisal of the owner-workers made by a committee. The committee which made the appraisal in 1929 consisted of six members, and that making the one of 1931 of eight members. These committees had before them the following classes of information: enterprise with which connected; office held or position occupied; number of active copartners; proportion of personal time involved; manner in which such time employed and proportion devoted to various activities; term of experience in livestock commission business; term of experience in livestock industry; commissions earned by the enterprise; cash value of sales and purchases made to earn such commissions; and, the number of head of livestock handled by species and in total. These committees did not possess any peculiar qualifications for making this appraisal. Even if the appraisal of services such as these could be considered as a matter determinable by expert opinion, any generally well informed citizen with the information at his disposal which the committees had before them could make an equally trustworthy appraisal. But the rejection of the appraisal method rests upon a further and more fundamental ground in that this method seeks to place upon each respondent worker, by name, an annual value based upon such record of his past performance as was before the committee and above which it is unreasonable for him to earn, regardless of his future accomplishments and below which it is unreasonable to expect him to serve, regardless of the small amount of service he renders. This would seem to be a clear-cut example of the wage fixing condemned in Wolff Packing Co. v. Industrial Court, 262 U. S. 522. As contrasted with this, the performance method urged by Government counsel places no limit, either by

way of maximum or minimum, upon the amount of annual compensation which reasonably an owner-salesman may earn.
93 It finds a reasonable compensation to the respondents for the performance of a unit of salesmanship, whether it be done by owner or employee, and leaves the firm in position to expand or contract its reasonable income as it proves successful or unsuccessful in multiplying the units of salesmanship performed. To illustrate, if a fair annual salary be taken as $4,000 and a reasonable full year's performance as the sale of 29,000 head of cattle, then the reasonable allowance for salesmanship will be 13.79 cents per head and the owner who is able to sell 35,000 head will be entitled to a compensation of $4,826.50, while one who succeeds in selling only 20,000 head will be entitled only to $2,758.

136. The record in this case contains all the information which the committees had before them and in addition many other facts pertinent to the determination of the cost of such services as are performed by owners, among which are the prices at which services such as those rendered by the owners are being bought and sold for on an open, competitive market. Such prices are the test generally regarded as proper measures. The record contains some facts which furnish a partial test of the appraisals. Some of the owners whose services in their respective business were appraised by the committee in 1929 later became employees on a salary basis at figures much below those at which their services were appraised. One such owner, a cattle salesman, whose services were appraised by the committee at $4,000 in 1929 was receiving in 1932 a salary of $1,700. Another cattle salesman whose services were appraised at $3,000 in 1929 was receiving a salary in 1932 of $1,800. In another case a hog salesman whose services were appraised at $2,500 in 1929 was employed as a cattle yardman in 1932 at a salary of $875.

137. The evidence shows that an important element influencing the value placed by those committees upon the services of owners was the business drawing power of the owners. These appraisals include also elements on account of risk-bearing and executive functions exercised by the owners. All these elements are considered elsewhere and a reasonable allowance made for them in the determination of reasonable unit costs.

138. Since neither owners' salaries, as set up on the books, nor the appraised value of owners' services can be accepted as
94 determinative of the unit costs of salesmanship, some other method must be adopted. That here used is the ascertainment of what the salesman's services are selling for and relating these to what, according to the record, constitutes a reasonable year's work. The salesmanship to be provided for in this order

contemplates that it will be of high character, whether performed by owners or by salesmen employed by them. The shipper is entitled to have his livestock sold by the most efficient and competent salesmen available on the market. Such salesmen, whether owners or employees, are entitled to receive a fair reward for their ability and services. An owner, while entitled to reasonable remuneration for management and the assumption of risk, which are ordinarily referred to as profit, is not entitled merely because he is an owner to more for the act of selling livestock than it would cost to get some other equally efficient salesman to perform the selling service for him.

139. The record contains the number of employed salesmen on the yards in 1929 and in 1931, together with the salaries they drew. There were in 1929, 122 employed cattle salesmen, 42 employed hog salesmen, and 11 employed sheep salesmen on the Kansas City market. In 1931 there were 133 employed cattle salesmen, 46 employed hog salesmen, and 14 employed sheep salesmen. The following table shows by salary range the number of salesmen of the various species in the two years and the salary grades into which they fall:

CATTLE SALESMEN

| | 1929 | 1931 |
|---|---|---|
| No. receiving: | | |
| $6,000 or more | 6 | 4 |
| $5,000 to $6,000 | 3 | 5 |
| $4,000 to $5,000 | 13 | 9 |
| $3,000 to $4,000 | 38 | 32 |
| $2,000 to $3,000 | 30 | 50 |
| Less than $2,000 | 32 | 33 |
| Total | 122 | 133 |

HOG SALESMAN

| | | |
|---|---|---|
| No. receiving: | | |
| $9,300 | 1 | none |
| $8,800 | none | 1 |
| $9,095 | none | 1 |
| $4,000 to $5,000 | 2 | 1 |
| $3,000 to $4,000 | 10 | 4 |
| $2,000 to $3,000 | 16 | 20 |
| Under $2,000 | 13 | 19 |
| Total | 42 | 46 |

95 SHEEP SALESMEN

| | | |
|---|---|---|
| No. receiving: | | |
| $7,000 | 1 | 1 |
| $4,970 | 1 | none |
| $4,887 | none | 1 |
| $4,800 | 1 | none |
| $3,000 to $4,000 | 4 | 2 |
| $2,000 to $3,000 | 3 | 6 |
| Under $2,000 | 1 | 4 |
| Total | 11 | 14 |

In order to earn these salaries the employed salesmen performed actual selling and handling livestock in the yards, and spent time in the country doing appraisal and publicity work. The record does not show for employed salesmen the amount of work done by any individual. The average number of head per salesman sold during the course of the year by the salesmen of a firm does not furnish a measure of the ability or the capacity of any individual salesman. The record contains opinions of salesmen as to what they consider a reasonable year's work on the Kansas City market where there are seasonal variations in the receipts of livestock and where the days of heaviest receipts come during the early part of the week.

140. A salesman employed by one of the respondents testified that a good salesman should sell 1,500 cars of cattle in a year. Another witness employed by a respondent stated that a good salesman can sell *well* as much as 2,000 cars per year. Another, a respondent, stated that a butcher salesman could sell 1,600 cars of butcher stuff in a year, and should be able to sell that many cars of steers. He stated also that a hog salesman should sell more than 1,600 cars of hogs, and that a sheep salesman should sell from 1,500 to 2,000 cars of sheep. On one day during the first hearing a salesman who is a member of one of the respondent firms sold about 30 cars of cattle, most of which had been carried over from the previous day on account of an unsatisfactory market. It is the opinion of some of the salesmen that they could sell more livestock than they do sell if they had the opportunity to exercise fully their selling ability.

141. The number of animals per straight car received by the various respondents varies somewhat according to the char-
96 acter of the business done, but the normal and usual number of head of cattle contained in a straight car is approximately 28 head, calves 57 head, hogs 75 head, and sheep 250 head.

142. Giving due consideration to the conditions under which salesmanship is performed on the Kansas City market, the volume of livestock handled by the respective firms and the estimates of salesmen as to what constitutes a reasonable year's work, it would be reasonable to expect a good and experienced salesman to sell in a year from 27,000 to 32,000 head of animals of the bovine species as they arrive at the Kansas City stockyard in the year 1931; a hog salesman from 75,000 to 100,000 head of hogs in a year; and a sheep salesman from 240,000 to 275,000 head of sheep.

143. If the selling of 29,000 head of cattle and calves, which is below the estimate of any witness as to what constitutes a reasonable year's work, be taken as the work to be done in order to earn a salary of $4,000, which is in the high salary range being paid

salesmen on the Kansas City market, the reasonable cost to the shipper on account of the function of salesmanship is 13.79 cents per head. Likewise, if the selling of 85,000 head of hogs be considered a reasonable year's work, and $3,000, which is in the high salary range, be taken to be a corresponding remuneration, the salesmanship cost to the shipper on account of hogs is approximately 3.529 cents per head. If the selling of 250,000 head of sheep be considered to be a year's work for which a $3,500 a year salary is compensatory, the reasonable per head cost to the shipper for salesmanship on account of sheep is 1.4 cents per head. On the basis of all the facts in the record it is found that the following constitute reasonable per head costs to be covered into rates on account of salesmanship:

| | |
|---|---|
| Cattle and Calves | $.1379 |
| Hogs | .0353 |
| Sheep | .0140 |

## Yarding Salaries

144. The handling of livestock in the yard occasions expenses on account of salaries paid to those who do the yarding. The accountant for the Government allocated yarding salaries
97 direct to species. The per head cost of yarding salaries on account of each species, irrespective of mode of arrival, is shown in the following tables:

CATTLE AND CALVES

| Firm No. | Number of head | Yarding salaries | Firm No. | Number of head | Yarding salaries |
|---|---|---|---|---|---|
| 66 | 3,656 | $.0064 | 16 | 26,673 | $.0699 |
| 34 | 52,225 | .0129 | 14 | 42,094 | .0706 |
| 67 | 454 | .0140 | 12 | 67,947 | .0711 |
| 79 | 11,360 | .0278 | 26 | 30,383 | .0719 |
| 83 | 122,107 | .0279 | 65 | 40,303 | .0720 |
| 15 | 14,983 | .0311 | 63 | 128,888 | .0721 |
| 9 | 3,113 | .0388 | 75 | 25,113 | .0746 |
| 87 | 991 | .0395 | 10 | 119,514 | .0781 |
| 35 | 61,658 | .0400 | 59 | 164,860 | .0784 |
| 30 | 23,436 | .0425 | 20 | 32,320 | .0811 |
| 54 | 185,312 | .0481 | 71 | 62,038 | .0818 |
| 61 | 10,731 | .0489 | 6 | 15,841 | .0830 |
| 37 | 2,122 | .0490 | 25 | 53,312 | .0840 |
| 53 | 28,558 | .0496 | 51 | 22,495 | .0849 |
| 70 | 38,997 | .0517 | 29 | 25,581 | .0880 |
| 73 | 79,012 | .0531 | 4 | 35,762 | .0895 |
| 56 | 34,058 | .0535 | 82 | 110,449 | .1015 |
| 42 | 67,492 | .0565 | 36 | 86,051 | .1023 |
| 60 | 19,205 | .0584 | 84 | 67,609 | .1044 |
| 46 | 157,432 | .0619 | 19 | 12,570 | .1112 |
| 74 | 8,750 | .0621 | 78 | 10,819 | .1139 |
| 52 | 21,690 | .0642 | 72 | 2,397 | .1206 |
| 18 | 59,107 | .0650 | 77 | 23,436 | .1230 |
| 48 | 42,359 | .0665 | 13 | 63,945 | .1285 |
| 62 | 31,539 | .0666 | 7 | 15,790 | .1353 |
| 55 | 61,113 | .0676 | 17 | 11,336 | .1399 |
| 28 | 34,942 | .0682 | 76 | 9,619 | .1635 |
| 33 | 1,479 | .0695 | 11 | 1,878 | .2130 |

HOGS

| Firm No. | Number of head | Yarding salaries | Firm No. | Number of head | Yarding salaries |
|---|---|---|---|---|---|
| 82 | 30,135 | $.0059 | 10 | 96,653 | $.0305 |
| 29 | 12,619 | .0060 | 4 | 9,552 | .0309 |
| 67 | 6,015 | .0081 | 46 | 33,474 | .0316 |
| 34 | 16,312 | .0112 | 37 | 35 | .0329 |
| 78 | 4,738 | .0136 | 26 | 20,321 | .0332 |
| 66 | 737 | .0151 | 79 | 2,969 | .0355 |
| 70 | 13,628 | .0185 | 75 | 5,134 | .0358 |
| 48 | 5,952 | .0195 | 16 | 8,498 | .0357 |
| 59 | 70,554 | .0196 | 36 | 147,922 | .0364 |
| 52 | 6,196 | .0197 | 7 | 41,090 | .0366 |
| 18 | 11,653 | .0207 | 51 | 159,184 | .0367 |
| 84 | 2,364 | .0207 | 30 | 3,489 | .0395 |
| 77 | 10,192 | .0218 | 12 | 28,132 | .0400 |
| 61 | 9,679 | .0222 | 35 | 12,017 | .0421 |
| 87 | 399 | .0228 | 13 | 40,816 | .0439 |
| 6 | 8,168 | .0228 | 73 | 34,425 | .0507 |
| 42 | 11,442 | .0230 | 15 | 20,743 | .0599 |
| 20 | 3,727 | .0235 | 9 | 19,051 | .0601 |
| 76 | 8,629 | .0263 | 54 | 27,122 | .0632 |
| 63 | 150,906 | .0263 | 25 | 19,201 | .0641 |
| 71 | 20,323 | .0267 | 11 | 2,990 | .0710 |
| 62 | 15,810 | .0284 | 60 | 21,164 | .0721 |
| 83 | 4,078 | .0287 | 55 | 21,227 | .0760 |
| 56 | 8,191 | .0290 | 14 | 27,819 | .1112 |
| 65 | 7,619 | .0299 | 53 | 18,764 | .1241 |
| 17 | 6,872 | .0300 | | | |



SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 43 | 140,481 | $.0030 | 1 | 43,274 | $.0081 |
| 54 | 591,028 | .0034 | 5 | 209,208 | .0086 |
| 25 | 44,036 | .0041 | 87 | 96,975 | .0095 |
| 63 | 43,330 | .0051 | 59 | 205,441 | .0097 |
| 36 | 36,575 | .0065 | 61 | 991 | .0105 |
| 44 | 267,391 | .0078 | 10 | 94,843 | .0156 |

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding salaries are as follows:

$.075 per head as to cattle and calves.
$.030 per head as to hogs.
$.008 per head as to sheep.

## Yarding Expenses

145. The per head cost of yarding expenses on account of each species is as follows:

## CATTLE AND CALVES

| Firm No. | Number of head | Yarding expenses | Firm No. | Number of head | Yarding expenses |
|---|---|---|---|---|---|
| 61 | 10,731 | $.0003 | 20 | 32,320 | $.0110 |
| 37 | 2,122 | .0009 | 84 | 67,609 | .0114 |
| 6 | 15,841 | .0014 | 77 | 23,436 | .0116 |
| 15 | 14,983 | .0026 | 55 | 61,113 | .0116 |
| 78 | 10,819 | .0028 | 53 | 28,558 | .0121 |
| 16 | 20,673 | .0040 | 17 | 11,336 | .0124 |
| 34 | 52,225 | .0045 | 10 | 119,514 | .0125 |
| 88 | 2,897 | .0051 | 26 | 30,383 | .0127 |
| 30 | 23,436 | .0054 | 36 | 86,051 | .0128 |
| 33 | 1,479 | .0054 | 18 | 59,107 | .0129 |
| 56 | 34,058 | .0075 | 51 | 22,495 | .0133 |
| 84 | 185,312 | .0078 | 25 | 53,312 | .0135 |
| 82 | 110,449 | .0080 | 14 | 42,094 | .0143 |
| 13 | 63,945 | .0082 | 83 | 122,107 | .0146 |
| 75 | 25,113 | .0082 | 29 | 25,581 | .0150 |
| 7 | 15,790 | .0084 | 52 | 21,600 | .0151 |
| 46 | 157,432 | .0084 | 48 | 42,359 | .0154 |
| 70 | 38,967 | .0090 | 23 | 34,942 | .0158 |
| 12 | 67,947 | .0093 | 42 | 67,492 | .0159 |
| 65 | 40,303 | .0095 | 74 | 8,750 | .0169 |
| 4 | 35,763 | .0096 | 63 | 128,888 | .0172 |
| 35 | 61,658 | .0100 | 60 | 19,205 | .0173 |
| 62 | 31,539 | .0103 | 71 | 62,038 | .0181 |
| 73 | 79,012 | .0104 | 19 | 12,570 | .0202 |
| 59 | 164,860 | .0105 | | | |

99

## HOGS

| | | | | | |
|---|---|---|---|---|---|
| 14 | 27,819 | $.0001 | 10 | 96,353 | $.0004 |
| 48 | 5,952 | .0001 | 52 | 6,196 | .0005 |
| 54 | 27,112 | .0001 | 25 | 19,201 | .0006 |
| 61 | 9,679 | .0001 | 35 | 12,017 | .0006 |
| 83 | 4,078 | .0001 | 77 | 10,192 | .0006 |
| 36 | 147,922 | .0001 | 78 | 4,738 | .0006 |
| 4 | 9,552 | .0002 | 62 | 15,910 | .0007 |
| 6 | 8,168 | .0002 | 73 | 34,425 | .0007 |
| 7 | 41,090 | .0002 | 15 | 20,743 | .0009 |
| 18 | 11,653 | .0002 | 75 | 5,134 | .0010 |
| 34 | 16,312 | .0002 | 79 | 2,969 | .0010 |
| 55 | 21,227 | .0002 | 26 | 20,321 | .0010 |
| 59 | 70,554 | .0002 | 30 | 3,489 | .0011 |
| 63 | 150,806 | .0002 | 71 | 20,323 | .0012 |
| 46 | 33,474 | .0003 | 29 | 12,619 | .0012 |
| 82 | 30,135 | .0003 | 23 | 1,536 | .0013 |
| 13 | 40,816 | .0004 | 42 | 11,442 | .0014 |
| 20 | 3,727 | .0004 | 17 | 6,572 | .0015 |
| 51 | 159,184 | .0004 | 88 | 249 | .0045 |
| 53 | 18,764 | .0004 | 65 | 7,619 | .0088 |
| 60 | 21,164 | .0004 | | | |

## SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 18 | 3,157 | $.0001 | 60 | 753 | $.0003 |
| 46 | 7,795 | .0001 | 82 | 2,007 | .0003 |
| 63 | 43,330 | .0001 | 53 | 733 | .0005 |
| 73 | 4,035 | .0001 | 75 | 2,487 | .0005 |
| 36 | 36,575 | .0001 | 77 | 1,635 | .0005 |
| 13 | 5,688 | .0002 | 78 | 3,432 | .0005 |
| 35 | 44,030 | .0002 | 15 | 3,854 | .0006 |
| 55 | 3,685 | .0002 | 17 | 756 | .0006 |
| 83 | 2,380 | .0002 | 26 | 2,657 | .0007 |
| 6 | 1,220 | .0003 | 29 | 734 | .0007 |
| 20 | 872 | .0003 | 71 | 1,414 | .0011 |
| 25 | 3,676 | .0003 | 30 | 533 | .0046 |
| 51 | 6,942 | .0003 | 42 | 1,460 | .0130 |
| 52 | 4,320 | .0003 | 65 | 2,184 | .0131 |

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding expenses are as follows:

$.014 per head as to cattle and calves.
$.0060 per head as to hogs.
$.0004 per head as to sheep.

## Office Salaries

146. The per head cost on account of office salaries allocated to each of the species is as follows:

100 CATTLE AND CALVES

| Firm No. | Number of head | Office salaries | Firm No. | Number of head | Office salaries |
|---|---|---|---|---|---|
| 6 | 15,841 | $.0010 | 46 | 157,432 | $.0530 |
| 17 | 11,336 | .0143 | 54 | 185,312 | .0558 |
| 83 | 122,107 | .0203 | 75 | 25,115 | .0567 |
| 71 | 62,038 | .0206 | 76 | 9,619 | .0570 |
| 14 | 42,094 | .0217 | 73 | 79,012 | .0575 |
| 34 | 52,225 | .0230 | 20 | 32,320 | .0628 |
| 35 | 61,658 | .0240 | 52 | 21,690 | .0629 |
| 42 | 67,492 | .0256 | 7 | 15,790 | .0631 |
| 53 | 28,558 | .0330 | 78 | 16,819 | .0636 |
| 13 | 63,945 | .0382 | 61 | 10,731 | .0692 |
| 63 | 128,888 | .0367 | 23 | 34,942 | .0693 |
| 82 | 110,449 | .0373 | 29 | 25,581 | .0707 |
| 10 | 119,514 | .0396 | 70 | 38,967 | .0730 |
| 62 | 31,539 | .0396 | 25 | 53,312 | .0734 |
| 30 | 22,436 | .0414 | 56 | 34,058 | .0810 |
| 55 | 61,113 | .0441 | 65 | 40,303 | .0879 |
| 77 | 23,436 | .0442 | 74 | 8,750 | .1002 |
| 50 | 30,383 | .0447 | 51 | 22,495 | .1150 |
| 60 | 19,205 | .0449 | 19 | 12,570 | .1192 |
| 12 | 67,947 | .0450 | 11 | 1,878 | .1195 |
| 59 | 164,860 | .0458 | 33 | 1,479 | .1385 |
| 18 | 59,107 | .0460 | 9 | 3,113 | .1472 |
| 79 | 11,360 | .0484 | 37 | 2,122 | .1567 |
| 48 | 42,359 | .0492 | 80 | 3,656 | .1629 |
| 36 | 96,051 | .0518 | 72 | 2,397 | .1784 |
| 4 | 35,763 | .0525 | 67 | 454 | .1821 |
| 15 | 14,983 | .0529 | 88 | 2,897 | .1955 |
| 84 | 67,609 | .0534 | 87 | 991 | .2117 |
| 16 | 26,673 | .0544 | | | |

## HOGS

| Firm No. | Number of head | Yarding expenses | Firm No. | Number of head | Yarding expenses |
|---|---|---|---|---|---|
| 6 | 8,168 | $.0004 | 10 | 96,653 | $.0313 |
| 17 | 6,872 | .0076 | 52 | 6,196 | .0319 |
| 34 | 16,312 | .0115 | 78 | 4,738 | .0322 |
| 14 | 27,819 | .0117 | 70 | 13,628 | .0336 |
| 61 | 9,679 | .0146 | 59 | 70,554 | .0339 |
| 71 | 20,323 | .0152 | 67 | 6,015 | .0365 |
| 53 | 18,764 | .0181 | 12 | 28,132 | .0376 |
| 42 | 11,442 | .0189 | 65 | 7,619 | .0384 |
| 63 | 150,806 | .0194 | 11 | 2,990 | .0395 |
| 77 | 10,192 | .0195 | 20 | 3,727 | .0403 |
| 13 | 40,816 | .0198 | 46 | 33,474 | .0423 |
| 79 | 2,969 | .0209 | 16 | 8,498 | .0451 |
| 15 | 20,743 | .0210 | 75 | 5,134 | .0503 |
| 35 | 12,017 | .0214 | 23 | 1,536 | .0505 |
| 51 | 150,184 | .0229 | 30 | 3,489 | .0518 |
| 73 | 34,425 | .0231 | 33 | 1,690 | .0537 |
| 4 | 9,552 | .0232 | 84 | 11,944 | .0553 |
| 76 | 8,629 | .0232 | 19 | 4,497 | .0579 |
| 7 | 41,090 | .0233 | 9 | 19,051 | .0585 |
| 60 | 21,164 | .0233 | 25 | 19,201 | .0604 |
| 55 | 21,227 | .0253 | 83 | 4,078 | .0614 |
| 18 | 11,653 | .0259 | 74 | 2,364 | .0665 |
| 36 | 147,922 | .0262 | 37 | 35 | .0674 |
| 62 | 15,810 | .0266 | 56 | 8,191 | .0683 |
| 82 | 30,135 | .0270 | 72 | 1,077 | .0970 |
| 48 | 5,952 | .0278 | 57 | 390 | .1030 |
| 26 | 20,321 | .0292 | 66 | 737 | .1480 |
| 29 | 12,619 | .0300 | 88 | 249 | .2100 |
| 54 | 27,122 | .0514 | | | |

101

## SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 6 | 1,220 | $.0035 | 52 | 4,220 | $.0189 |
| 1 | 43,274 | .0013 | 36 | 36,575 | .0191 |
| 17 | 756 | .0042 | 53 | 6,942 | .0194 |
| 59 | 205,441 | .0044 | 65 | 2,184 | .0196 |
| 44 | 267,391 | .0055 | 16 | 1,570 | .0199 |
| 54 | 591,028 | .0060 | 23 | 862 | .0201 |
| 34 | 150,283 | .0067 | 55 | 3,685 | .0204 |
| 35 | 44,036 | .0068 | 12 | 3,430 | .0206 |
| 14 | 7,365 | .0071 | 62 | 3,065 | .0212 |
| 79 | 2,273 | .0074 | 7 | 1,295 | .0252 |
| 18 | 3,157 | .0078 | 46 | 7,795 | .0264 |
| 4 | 1,896 | .0095 | 78 | 3,432 | .0283 |
| 57 | 96,975 | .0102 | 60 | 753 | .0294 |
| 43 | 140,481 | .0105 | 82 | 2,007 | .0294 |
| 5 | 209,208 | .0108 | 20 | 873 | .0291 |
| 33 | 2,380 | .0110 | 25 | 3,676 | .0316 |
| 10 | 94,843 | .0113 | 34 | 190 | .0341 |
| 76 | 1,553 | .0115 | 70 | 2,807 | .0346 |
| 63 | 43,330 | .0131 | 29 | 734 | .0374 |
| 15 | 3,854 | .0135 | 67 | 580 | .0386 |
| 73 | 4,035 | .0135 | 45 | 430 | .0395 |
| 77 | 1,635 | .0149 | 19 | 1,252 | .0449 |
| 42 | 1,460 | .0158 | 11 | 175 | .0490 |
| 50 | 4,924 | .0158 | 74 | 333 | .0520 |
| 13 | 5,688 | .0162 | 33 | 805 | .0676 |
| 61 | 991 | .0165 | 30 | 533 | .0689 |
| 71 | 1,414 | .0172 | 37 | 321 | .0757 |
| 32 | 733 | .0173 | 9 | 508 | .0796 |
| 75 | 2,437 | .0181 | 66 | 283 | .1609 |
| 26 | 2,657 | .0185 | 72 | 45 | .1764 |

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office salaries are as follows:

$.0525 per head as to cattle and calves.
$.0300 per head as to hogs.
$.0100 per head as to sheep.

## Office Expenses

147. The per head cost on account of office expenses allocated to each of the species is as follows:

CATTLE AND CALVES

| Firm No. | Number of head | Office expenses | Firm No. | Number of head | Office expenses |
|---|---|---|---|---|---|
| 88 | 2,897 | $.0016 | 26 | 30,383 | .0328 |
| 37 | 2,122 | .0017 | 78 | 10,819 | .0328 |
| 72 | 2,397 | .0091 | 46 | 157,432 | .0329 |
| 84 | 67,609 | .0138 | 61 | 10,731 | .0343 |
| 16 | 26,673 | .0147 | 70 | 38,967 | .0350 |
| 76 | 9,619 | .0158 | 77 | 23,436 | .0360 |
| 102 4 | 35,763 | .0163 | 75 | 25,113 | .0371 |
| 59 | 164,860 | .0186 | 71 | 62,036 | .0379 |
| 67 | 454 | .0190 | 34 | 82,225 | .0401 |
| 23 | 34,942 | .0214 | 30 | 23,436 | .0402 |
| 12 | 67,947 | .0217 | 15 | 14,963 | .0411 |
| 54 | 185,312 | .0219 | 73 | 79,012 | .0419 |
| 7 | 15,790 | .0222 | 35 | 61,658 | .0429 |
| 18 | 59,107 | .0232 | 62 | 31,539 | .0430 |
| 42 | 67,492 | .0236 | 6 | 15,841 | .0434 |
| 83 | 122,107 | .0236 | 82 | 110,449 | .0443 |
| 36 | 86,051 | .0238 | 60 | 19,205 | .0447 |
| 52 | 21,690 | .0251 | 19 | 12,570 | .0455 |
| 56 | 34,058 | .0269 | 79 | 11,360 | .0456 |
| 33 | 1,479 | .0272 | 14 | 42,094 | .0458 |
| 65 | 40,303 | .0279 | 20 | 32,220 | .0461 |
| 10 | 119,514 | .0290 | 13 | 63,945 | .0493 |
| 48 | 42,359 | .0291 | 11 | 1,878 | .0538 |
| 17 | 11,336 | .0292 | 74 | 8,750 | .0543 |
| 63 | 128,888 | .0292 | 29 | 25,581 | .0546 |
| 53 | 28,558 | .0301 | 81 | 22,495 | .0573 |
| 25 | 53,312 | .0302 | 57 | 991 | .1042 |
| 55 | 61,113 | .0313 | 9 | 3,113 | .1947 |

HOGS

| Firm No. | Number of head | Office expenses | Firm No. | Number of head | Office expenses |
|---|---|---|---|---|---|
| 37 | 35 | $.0011 | 42 | 11,442 | $.0175 |
| 88 | 249 | .0016 | 12 | 28,132 | .0178 |
| 67 | 6,015 | .0038 | 11 | 2,990 | .0178 |
| 76 | 8,629 | .0048 | 55 | 21,227 | .0179 |
| 72 | 1,077 | .0049 | 6 | 8,168 | .0179 |
| 61 | 9,679 | .0073 | 34 | 16,312 | .0193 |
| 4 | 9,552 | .0073 | 79 | 2,969 | .0198 |
| 7 | 41,090 | .0082 | 54 | 27,122 | .0202 |
| 33 | 1,690 | .0106 | 26 | 30,321 | .0215 |
| 81 | 159,194 | .0114 | 19 | 4,497 | .0220 |
| 36 | 147,922 | .0121 | 10 | 98,653 | .0229 |
| 65 | 7,619 | .0121 | 60 | 21,164 | .0237 |
| 16 | 8,498 | .0122 | 29 | 12,619 | .0239 |
| 82 | 6,196 | .0127 | 14 | 27,819 | .0244 |
| 18 | 11,653 | .0130 | 25 | 19,201 | .0249 |
| 83 | 4,078 | .0131 | 46 | 33,474 | .0255 |
| 89 | 70,554 | .0137 | 13 | 40,816 | .0256 |
| 84 | 11,944 | .0142 | 71 | 20,323 | .0280 |
| 63 | 150,806 | .0147 | 62 | 15,810 | .0288 |
| 17 | 6,872 | .0154 | 20 | 3,727 | .0295 |
| 23 | 1,536 | .0157 | 56 | 8,191 | .0310 |
| 77 | 16,192 | .0162 | 82 | 30,135 | .0311 |
| 78 | 4,738 | .0162 | 75 | 5,134 | .0330 |
| 15 | 20,743 | .0163 | 74 | 2,364 | .0373 |
| 48 | 5,952 | .0164 | 35 | 12,017 | .0382 |
| 53 | 18,764 | .0165 | 87 | 399 | .0502 |
| 70 | 13,628 | .0165 | 30 | 3,489 | .0503 |
| 73 | 34,425 | .0166 | 9 | 19,051 | .0774 |

103 SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 37 | 321 | $.0008 | 77 | 1,635 | $.0121 |
| 64 | 150,283 | .0017 | 35 | 44,026 | .0123 |
| 39 | 205,441 | .0018 | 83 | 2,380 | .0125 |
| 34 | 893,028 | .0028 | 25 | 3,676 | .0128 |
| 4 | 1,896 | .0031 | 33 | 806 | .0133 |
| 76 | 1,553 | .0033 | 26 | 2,657 | .0138 |
| 18 | 3,157 | .0039 | 78 | 3,432 | .0140 |
| 67 | 880 | .0041 | 55 | 3,685 | .0147 |
| 43 | 140,481 | .0042 | 14 | 7,365 | .0147 |
| 57 | 96,975 | .0060 | 42 | 1,490 | .0149 |
| 5 | 209,208 | .0063 | 46 | 7,795 | .0159 |
| 50 | 4,924 | .0063 | 53 | 732 | .0161 |
| 16 | 1,570 | .0065 | 19 | 1,252 | .0171 |
| 44 | 267,391 | .0066 | 70 | 2,507 | .0173 |
| 65 | 2,184 | .0067 | 1 | 43,274 | .0181 |
| 23 | 862 | .0068 | 6 | 1,220 | .0211 |
| 79 | 2,273 | .0070 | 13 | 5,688 | .0213 |
| 32 | 4,320 | .0076 | 11 | 175 | .0217 |
| 17 | 756 | .0082 | 48 | 430 | .0218 |
| 61 | 991 | .0082 | 30 | 872 | .0223 |
| 10 | 94,843 | .0083 | 62 | 3,966 | .0234 |
| 7 | 1,295 | .0086 | 60 | 753 | .0275 |
| 76 | 1,553 | .0089 | 74 | 333 | .0275 |
| 72 | 45 | .0091 | 29 | 794 | .0289 |
| 51 | 6,942 | .0096 | 71 | 1,414 | .0314 |
| 73 | 4,035 | .0097 | 82 | 2,007 | .0323 |
| 12 | 3,439 | .0099 | 34 | 190 | .0574 |
| 63 | 43,330 | .0099 | 30 | 333 | .0671 |
| 15 | 3,854 | .0103 | 9 | 598 | .1039 |
| 75 | 2,487 | .0118 | | | |

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office expenses are as follows:

$.0300 per head as to cattle and calves.
$.0175 per head as to hogs.
$.0050 per head as to sheep.

## Business Getting and Maintaining Expenses

148. The per head cost on account of business getting and maintaining expenses allocated to each of the species is as follows:

CATTLE AND CALVES

| Firm No. | Number of head | Business getting and maintaining expenses | Firm No. | Number of head | Business getting and maintaining expenses |
|---|---|---|---|---|---|
| 76 | 9,619 | $.0058 | 75 | 25,113 | $.0056 |
| 60 | 3,656 | .0107 | 6 | 15,841 | .0072 |
| 67 | 454 | .0170 | 83 | 122,107 | .0077 |
| 15 | 14,983 | .0219 | 34 | 52,225 | .0699 |
| 37 | 2,122 | .0229 | 13 | 63,945 | .0714 |
| 72 | 2,397 | .0241 | 84 | 67,609 | .0724 |
| 104 | 3,113 | .0264 | 59 | 164,860 | .0732 |
| 56 | 34,058 | .0271 | 25 | 53,312 | .0735 |
| 68 | 40,303 | .0271 | 74 | 8,750 | .0739 |
| 61 | 10,731 | .0277 | 71 | 62,038 | .0756 |
| 23 | 34,942 | .0299 | 32 | 21,690 | .0763 |
| 29 | 25,581 | .0455 | 20 | 32,320 | .0797 |
| 17 | 11,336 | .0474 | 14 | 42,094 | .0780 |
| 60 | 19,205 | .0489 | 82 | 110,449 | .0819 |
| 48 | 42,389 | .0508 | 26 | 30,383 | .0873 |
| 7 | 15,790 | .0519 | 12 | 67,947 | .0884 |
| 16 | 26,673 | .0520 | 64 | 185,312 | .0924 |
| 33 | 1,479 | .0540 | 19 | 12,570 | .0974 |
| 79 | 11,360 | .0540 | 73 | 79,012 | .1037 |
| 51 | 22,495 | .0543 | 42 | 67,492 | .1112 |
| 36 | 86,051 | .0576 | 70 | 38,967 | .1149 |
| 30 | 23,436 | .0581 | 35 | 61,658 | .1198 |
| 87 | 991 | .0599 | 4 | 35,763 | .1232 |
| 55 | 61,113 | .0612 | 63 | 128,888 | .1262 |
| 18 | 59,107 | .0628 | 53 | 28,556 | .1346 |
| 77 | 23,436 | .0632 | 10 | 119,514 | .1448 |
| 78 | 10,819 | .0639 | 62 | 31,539 | .1656 |
| 46 | 157,432 | .0647 | 86 | 2,897 | .2783 |

106 HOGS

| | | | | | |
|---|---|---|---|---|---|
| 76 | 8,629 | $.0022 | 17 | 6,872 | $.0228 |
| 66 | 737 | .0060 | 60 | 21,164 | .0238 |
| 67 | 6,015 | .0062 | 36 | 147,922 | .0238 |
| 9 | 19,051 | .0062 | 33 | 1,690 | .0240 |
| 72 | 1,077 | .0104 | 79 | 2,969 | .0251 |
| 15 | 20,743 | .0108 | 18 | 11,653 | .0252 |
| 20 | 3,727 | .0120 | 84 | 11,944 | .0255 |
| 56 | 8,191 | .0142 | 51 | 159,184 | .0259 |
| 37 | 35 | .0157 | 70 | 13,628 | .0260 |
| 48 | 5,952 | .0161 | 14 | 27,819 | .0261 |
| 61 | 9,679 | .0161 | 77 | 10,192 | .0262 |
| 65 | 7,619 | .0163 | 30 | 3,489 | .0265 |
| 59 | 70,554 | .0164 | 7 | 41,090 | .0267 |
| 57 | 399 | .0184 | 83 | 4,078 | .0268 |
| 29 | 12,619 | .0191 | 34 | 16,312 | .0272 |
| 78 | 4,738 | .0191 | 75 | 5,134 | .0277 |
| 16 | 8,498 | .0235 | 25 | 19,301 | .0292 |

HOGS

| Firm No. | Number of head | Business getting and maintaining expenses | Firm No. | Number of head | Business getting and maintaining expenses |
|---|---|---|---|---|---|
| 6 | 8,168 | $.0302 | 12 | 28,132 | $.0393 |
| 54 | 27,122 | .0302 | 106 82 | 30,135 | .0394 |
| 23 | 1,536 | .0309 | 63 | 150,806 | .0410 |
| 46 | 33,474 | .0321 | 26 | 20,331 | .0421 |
| 71 | 20,323 | .0324 | 73 | 34,425 | .0467 |
| 19 | 4,497 | .0327 | 53 | 18,764 | .0490 |
| 13 | 40,816 | .0340 | 10 | 96,653 | .0535 |
| 45 | 21,227 | .0344 | 42 | 11,442 | .0544 |
| 74 | 2,364 | .0344 | 35 | 12,017 | .0546 |
| 4 | 9,552 | .0353 | 62 | 15,810 | .0773 |
| 32 | 6,196 | .0373 | 88 | 249 | .1834 |

SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 76 | 1,553 | $.0017 | 83 | 2,380 | $.0199 |
| 66 | 283 | .0055 | 29 | 734 | .0204 |
| 56 | 4,924 | .0058 | 12 | 3,439 | .0206 |
| 15 | 3,854 | .0066 | 44 | 267,391 | .0208 |
| 67 | 580 | .0070 | 25 | 2,676 | .0211 |
| 64 | 150,283 | .0081 | 33 | 805 | .0216 |
| 20 | 872 | .0091 | 187 60 | 753 | .0217 |
| 73 | 4,035 | .0092 | 70 | 2,507 | .0219 |
| 65 | 2,184 | .0093 | 51 | 6,942 | .0220 |
| 57 | 96,975 | .0094 | 59 | 205,441 | .0234 |
| 72 | 45 | .0104 | 14 | 7,365 | .0236 |
| 18 | 3,157 | .0111 | 7 | 1,295 | .0238 |
| 9 | 596 | .0111 | 30 | 533 | .0241 |
| 1 | 43,274 | .0116 | 10 | 91,843 | .0246 |
| 16 | 1,570 | .0120 | 15 | 5,688 | .0248 |
| 55 | 3,685 | .0131 | 19 | 1,352 | .0254 |
| 48 | 430 | .0140 | 52 | 4,320 | .0262 |
| 24 | 591,028 | .0140 | 71 | 1,414 | .0263 |
| 70 | 2,273 | .0141 | 35 | 44,036 | .0269 |
| 37 | 321 | .0142 | 74 | 333 | .0273 |
| 75 | 2,487 | .0155 | 6 | 1,220 | .0279 |
| 33 | 862 | .0158 | 63 | 43,330 | .0283 |
| 4 | 1,896 | .0163 | 82 | 2,007 | .0306 |
| 46 | 7,795 | .0173 | 26 | 2,657 | .0317 |
| 17 | 756 | .0181 | 43 | 140,481 | .0323 |
| 36 | 36,575 | .0181 | 53 | 733 | .0353 |
| 4 | 209,208 | .0194 | 42 | 1,460 | .0399 |
| 61 | 991 | .0195 | 34 | 190 | .0429 |
| 77 | 1,635 | .0195 | 62 | 3,065 | .0651 |
| 78 | 3,432 | .0199 | | | |

An amount reasonably necessary for business maintenance is an item properly coverable into a schedule of reasonable rates. Any expenditure above this amount directed toward increasing the volume of business should be recouped from the additional business obtained. Competition in the commission business is extremely keen and results in a race for getting business which does not manifest itself in a reduction of rates but consists largely in efforts by each market agency to take some of the business away from the other market agencies. Since the rates of most of the respondents are uniform, there is little inducement for the shipper to select one market agency in preference to another because of the rates charged. Business is attached in many cases by reason of ties of personal friendship; in other cases by the estimate of the character of services rendered. Each market agency holds its

services out to be of the highest quality and endeavors to convince the shipper of this fact. Under these conditions the amount expended for business getting and maintaining is limited only by what can be afforded under the existing rates, whatever they
108 may be, and by such limits as the respondents impose upon themselves. If excessive expenditures on this account be covered into a rate schedule, every shipper pays to have himself persuaded to send his livestock to one commission firm rather than to another which presumably can serve him equally well. Moreover, as already pointed out, some of the expenditures incurred to get and hold business are covered in general expenditures and in the salaries of salesmen employed, in part at least, on account of the business which they control as well as on account of the salesmanship which they perform. On the basis of all the facts in the record it is found that the reasonable amount to be covered into rates and paid by the shipper on account of business getting and maintaining should not exceed 10 percent of the total reasonable cost, and reasonable profit.

## Administrative and General Expenses

149. The per head cost on account of administrative and general expenses, namely, telephone and telegraph, directors' fees, legal and auditing, taxes, meals, clearing house, general and miscellaneous, allocated to each of the species, is as follows:

CATTLE AND CALVES

| Firm No. | Number of head | Administrative and general expenses | Firm No. | Number of head | Administrative and general expenses |
|---|---|---|---|---|---|
| 67 | 454 | $.0038 | 54 | 185,312 | .0270 |
| 72 | 2,397 | .0039 | 25 | 53,312 | .0272 |
| 66 | 3,656 | .0039 | 42 | 67,492 | .0275 |
| 37 | 2,122 | .0091 | 43 | 42,359 | .0280 |
| 17 | 11,336 | .0101 | 7 | 15,790 | .0282 |
| 56 | 34,058 | .0138 | 33 | 1,479 | .0292 |
| 61 | 10,731 | .0141 | 55 | 61,113 | .0293 |
| 9 | 3,113 | .0142 | 70 | 38,967 | .0301 |
| 14 | 42,094 | .0164 | 18 | 59,107 | .0309 |
| 15 | 14,983 | .0182 | 82 | 110,449 | .0330 |
| 11 | 1,878 | .0187 | 51 | 22,495 | .0331 |
| 62 | 31,539 | .0188 | 53 | 28,558 | .0334 |
| 71 | 62,038 | .0209 | 73 | 79,012 | .0351 |
| 76 | 9,619 | .0213 | 36 | 86,051 | .0351 |
| 75 | 25,113 | .0220 | 60 | 19,205 | .0356 |
| 65 | 40,303 | .0224 | 59 | 164,860 | .0362 |
| 20 | 32,320 | .0229 | 10 | 119,514 | .0389 |
| 26 | 30,383 | .0229 | 23 | 34,942 | .0400 |
| 16 | 26,673 | .0230 | 84 | 67,609 | .0405 |
| 12 | 67,947 | .0241 | 79 | 11,360 | .0411 |
| 13 | 63,945 | .0244 | 4 | 35,763 | .0448 |
| 109 29 | 25,581 | .0245 | 63 | 128,888 | .0454 |
| 30 | 23,436 | .0247 | 35 | 61,658 | .0499 |
| 6 | 15,841 | .0250 | 74 | 8,750 | .0539 |
| 52 | 21,690 | .0258 | 78 | 10,819 | .0580 |
| 19 | 12,570 | .0261 | 83 | 122,107 | .0714 |
| 34 | 52,225 | .0263 | 87 | 991 | .0775 |
| 77 | 23,436 | .0265 | 88 | 2,897 | .1156 |
| 46 | 157,432 | .0269 | | | |

HOGS

| Firm No. | Number of head | Administrative and general expenses | Firm No. | Number of head | Administrative and general expenses |
|---|---|---|---|---|---|
| 67 | 6,015 | $.0008 | 51 | 159,184 | $.0166 |
| 72 | 1,077 | .0021 | 55 | 21,227 | .0169 |
| 61 | 9,679 | .0030 | 18 | 11,653 | .0173 |
| 66 | 737 | .0036 | 79 | 2,969 | .0178 |
| 17 | 6,872 | .0054 | 36 | 147,922 | .0178 |
| 37 | 30 | .0054 | 53 | 18,764 | .0183 |
| 9 | 19,051 | .0057 | 60 | 21,164 | .0189 |
| 11 | 2,990 | .0062 | 16 | 8,498 | .0191 |
| 110 76 | 8,629 | .0064 | 12 | 28,132 | .0195 |
| 15 | 20,743 | .0072 | 75 | 5,134 | .0195 |
| 14 | 27,819 | .0089 | 4 | 9,552 | .0199 |
| 65 | 7,619 | .0097 | 42 | 11,442 | .0203 |
| 29 | 12,619 | .0104 | 46 | 33,474 | .0207 |
| 7 | 41,090 | .0105 | 25 | 19,201 | .0223 |
| 33 | 1,690 | .0114 | 63 | 150,806 | .0228 |
| 6 | 8,168 | .0116 | 82 | 30,135 | .0232 |
| 77 | 10,192 | .0117 | 54 | 27,122 | .0250 |
| 19 | 4,497 | .0126 | 59 | 70,554 | .0267 |
| 62 | 15,810 | .0126 | 78 | 4,738 | .0285 |
| 13 | 40,816 | .0127 | 23 | 1,536 | .0294 |
| 34 | 16,312 | .0127 | 10 | 96,653 | .0307 |
| 32 | 6,196 | .0130 | 30 | 3,489 | .0308 |
| 73 | 34,425 | .0133 | 74 | 2,364 | .0368 |
| 70 | 13,628 | .0139 | 87 | 150,806 | .0376 |
| 20 | 3,727 | .0147 | 83 | 4,078 | .0396 |
| 26 | 20,321 | .0155 | 84 | 11,944 | .0419 |
| 71 | 20,323 | .0155 | 35 | 12,017 | .0445 |
| 56 | 8,191 | .0159 | 88 | 249 | .1294 |
| 48 | 5,962 | .0163 | | | |

SHEEP

| | | Number of head | Administrative and general expenses | | | Number of head | Administrative and general expenses |
|---|---|---|---|---|---|---|---|
| 111 | 67 | 580 | $.0008 | 19 | | 1,252 | $.0096 |
| | 56 | 4,924 | .0027 | 62 | | 3,065 | .0102 |
| 54 | | 591,028 | .0028 | 13 | | 5,688 | .0105 |
| 17 | | 756 | .0031 | 12 | | 3,432 | .0110 |
| 61 | | 991 | .0033 | 7 | | 1,205 | .0110 |
| 39 | | 205,441 | .0035 | 20 | | 872 | .0111 |
| 87 | | 96,975 | .0037 | 10 | | 94,843 | .0111 |
| 43 | | 140,481 | .0037 | 23 | | 862 | .0118 |
| 66 | | 283 | .0039 | 25 | | 3,676 | .0120 |
| 72 | | 45 | .0040 | 6 | | 1,220 | .0122 |
| 76 | | 1,553 | .0043 | 29 | | 734 | .0125 |
| 46 | | 7,795 | .0043 | 46 | | 7,795 | .0129 |
| 37 | | 321 | .0044 | 55 | | 3,685 | .0131 |
| 15 | | 3,854 | .0046 | 36 | | 36,575 | .0131 |
| 65 | | 2,184 | .0050 | 51 | | 6,942 | .0139 |
| 5 | | 209,208 | .0051 | 33 | | 805 | .0142 |
| 84 | | 150,283 | .0051 | 35 | | 44,036 | .0143 |
| 18 | | 3,157 | .0052 | | 70 | 2,507 | .0145 |
| 14 | | 7,365 | .0053 | 112 | 63 | 43,330 | .0154 |
| 79 | | 2,273 | .0064 | | 71 | 1,414 | .0174 |
| 78 | | 2,487 | .0070 | 53 | | 733 | .0179 |
| 11 | | 175 | .0078 | 48 | | 430 | .0210 |
| 32 | | 4,320 | .0078 | 60 | | 753 | .0219 |
| 73 | | 4,035 | .0078 | 82 | | 2,007 | .0241 |
| 9 | | 598 | .0079 | 78 | | 3,432 | .0250 |
| 16 | | 1,570 | .0080 | 74 | | 333 | .0290 |
| 4 | | 1,896 | .0086 | 83 | | 2,380 | .0377 |
| 77 | | 1,635 | .0088 | 30 | | 533 | .0411 |
| 1 | | 43,274 | .0092 | 34 | | 190 | .0418 |
| 26 | | 2,657 | .0093 | 42 | | 1,460 | .0519 |

On the basis of these facts and all the information contained in the record, it is found that the following are reasonable per

head costs to be covered into rates on account of administrative expenses:

$.0830 per head as to cattle and calves.
$.0200 per head as to hogs.
$.0050 per head as to sheep.

## Insurance

150. Many of the risks incident to the conduct of the commission business are insurable; others are not. The expenses on account of premiums paid to carry insurable risks are costs properly coverable into a reasonable schedule of commission rates. Mortgage and theft, fire, and workmen's compensation insurance are the three types most generally carried by the respondents. The expenses on account of carrying these types of insurance are ascertainable and can be expressed in terms of per head costs in the case of each species. Mortgage and theft insurance premiums are quoted by insurance companies in standard cars defined as "25 head of cattle, 60 head of calves, 80 head of hogs, and 100 head of sheep." The rates are 10 cents per carload of livestock irrespective of species. This is $.00357 per head for cattle; $.00125 per head as to hogs; and $.001 per head as to sheep.

151. Workmen's compensation insurance is optional in the states of Missouri and Kansas, in which the respondents conduct their business. Some of the respondents carry this type of
113 insurance; others do not. Nevertheless, it is a legitimate cost to be provided for. A sufficient allowance should be made in the rates prescribed to enable each of the respondents either to carry this type of insurance or to set up a reserve against losses incurred. The cattle facilities of the stockyard company, where the majority of the respondents carry on their business, are located mainly in the State of Missouri, while the hog house is located in the State of Kansas. The auditor for the respondents segregated the expenses which he attributed to workmen's compensation on the basis of salaries paid in the State of Kansas and those paid in the State of Missouri. Premiums on account of this type of insurance are all on the basis of employee payroll. The yardwork payroll on account of hogs is occasioned largely in the State of Kansas, and the yardwork payroll on account of cattle and calves, and sheep is occasioned largely in the State of Missouri. The office payroll is occasioned jointly by all of the livestock handled. The auditor for the respondents attributed to all the firms represented by him $993.07, premiums on account of workmen's compensation for yard workers, to the State of Kansas; $7,048.27 to yard workers in Missouri; and $93.47 to office workers.

For all practical purposes he attributed $993.07 to hogs; $7,048.27 to cattle and calves, and sheep; and $93.47 to cattle and calves, hogs and sheep. The two accountants were in practical agreement as to the amount necessary to provide for insurance premiums. The accountant for the Government set up $911.76 for all respondents for fire insurance premiums, and the accountant for the respondents who are members of the Exchange set up $841.40.

152. In considering the reasonable per head expense on account of some other functions the experience of each firm has been gone into and the normal arrived at on the basis of the experience of each individual firm. The use of an average based upon an aggregate of the expenses of the firms under consideration has been condemned and the reason therefor given. In the case of expenses in which the amounts involved are so small, the consideration of the market as a whole or the consideration of the experience of each of the respondents would lead substantially to the same result. Because of this fact the figures for the market as a whole are used in arriving at the reasonable per head costs on account of insurance.

114 153. Premiums for workmen's compensation on account of cattle and calves, and sheep have been allocated to these species on the basis of the yard payroll occasioned by each. All premiums paid in the State of Kansas have been attributed to hogs. Office workmen's compensation premiums and fire insurance premiums are occasioned by all species. The sum of $93.47, office workmen's compensation premiums, and $841.40, fire insurance premiums, have been allocated to the various species on the basis of account sales and account purchases. These allocations result in attributing $7,219 to cattle and calves; $1,240 to hogs; and $517 to sheep. The per head expenditure on this basis is $.0032 for cattle and calves; $.0012 for hogs; and $.0003 for sheep.

154. This results in a per head allowance on account of the types of insurance discussed herein of $.00677 per head for cattle and calves; $.00245 per head for hogs; and $.0013 per head for sheep.

## Interest on Capital

155. A legitimate cost to be covered into rates and paid by shippers of livestock is a reasonable amount for interest on the capital necessary in the conduct of the commission business. Inasmuch as a separate allowance to cover the uninsurable risks and contingencies is hereafter provided for in profit, the reasonable rate of return herein found represents interest on the use of capital.

156. Three witnesses testified in the second hearing as to what constitutes a reasonable rate of return under the conditions above stated. Two of them were bankers called by the respondents and the third an economist called by the Government. One of the bankers and the economist are in substantial agreement. The economist, who testified first, gave it as his opinion that an allowance of 6 per cent interest on the value of the fixed assets would be reasonable and that a rate somewhere between 6 and 8 per cent on the amount of liquid working capital necessary in the business would be reasonable. One of the bankers called by the respondents gave it as his opinion that the Secretary of Agriculture would act fairly in arriving at a rate of return if he based his conclusions upon this opinion. The other banker called by the respondents stated that, in his judgment, a reasonable rate of return
115 would be 20 per cent. The inference to be drawn from his testimony, however, is that he had in mind an interest rate high enough not only to pay for the use of the capital but also to cover the risks incident to the business. The bank of which he is an official assesses charges against various of the respondents for the temporary overdrafts they make at his bank. The rates charged vary and depend, in part, upon the average amount of the deposits carried by them. He stated that the charge made by his bank to the respondents on these overdrafts would average around 7 per cent.

157. In determining the reasonable amount of capital to be considered in the case of each of the respondents, the amount as determined by the accountant for those respondents who are members of the Livestock Exchange has been considered. A segregation of capital has been made into fixed and working capital. Fixed capital has been taken to be the amount as determined by the accountant for the respondents represented by the following items, namely, furniture, fixtures, and equipment; materials and supplies; Exchange memberships; and mailing lists and customer records. On the value of these, interest at 6 per cent has been computed in the case of each firm. On the amount of working capital determined by the accountant for the respondents interest has been computed at 7 per cent. The sum of the interest on fixed assets and interest on working capital, expressed in cents per head, has been set up as to each firm.

158. The following tables set forth by firms the per head interest on account of selling, calculated on the basis stated above:

## CATTLE AND CALVES

| Firm No. | Number of head | Interest | Firm No. | Number of head | Interest |
|---|---|---|---|---|---|
| 48 | 36,376 | $0.0022 | 62 | 28,109 | .0187 |
| 19 | 9,941 | .0031 | 77 | 21,031 | .0187 |
| 84 | 62,243 | .0051 | 35 | 55,998 | .0189 |
| 87 | 953 | .0053 | 4 | 33,160 | .0193 |
| 59 | 138,133 | .0055 | 116 42 | 59,341 | .0101 |
| 34 | 26,859 | .0069 | 70 | 32,595 | .0102 |
| 54 | 117,345 | .0069 | 18 | 46,755 | .0109 |
| 55 | 47,630 | .0070 | 79 | 9,475 | .0115 |
| 83 | 45,799 | .0071 | 75 | 20,363 | .0116 |
| 82 | 90,682 | .0075 | 25 | 42,045 | .0118 |
| 81 | 22,013 | .0078 | 71 | 53,940 | .0122 |
| 46 | 99,113 | .0084 | 14 | 35,159 | .0125 |
| 63 | 89,771 | .0092 | 23 | 26,219 | .0125 |
| 13 | 55,362 | .0093 | 73 | 73,218 | .0125 |
| 65 | 35,698 | .0097 | 12 | 59,216 | .0130 |
| 56 | 29,689 | .0100 | 30 | 22,770 | .0134 |
| 20 | 27,615 | $0.0139 | 17 | 9,707 | .0215 |
| 53 | 26,901 | .0141 | 52 | 18,614 | .0231 |
| 26 | 28,553 | .0144 | 76 | 6,872 | .0265 |
| 7 | 14,931 | .0147 | 66 | 1,503 | .0324 |
| 61 | 10,042 | .0147 | 60 | 14,265 | .0374 |
| 78 | 7,125 | .0153 | 85 | 2,273 | .0463 |
| 15 | 12,797 | .0155 | 72 | 1,934 | .0494 |
| 74 | 6,732 | .0162 | 11 | 1,708 | .0529 |
| 9 | 2,191 | .0163 | 67 | 382 | .0594 |
| 29 | 24,297 | .0174 | 37 | 2,122 | .0624 |
| 6 | 10,253 | .0178 | 33 | 1,218 | .0737 |
| 16 | 23,073 | .0184 | | | |

## HOGS

| | | | | | |
|---|---|---|---|---|---|
| 61 | 8,801 | $.0007 | 6 | 7,962 | $.0051 |
| 19 | 3,068 | .0009 | 16 | 8,425 | .0051 |
| 59 | 64,996 | .0016 | 23 | 1,536 | .0055 |
| 51 | 156,853 | .0017 | 4 | 9,171 | .0055 |
| 55 | 20,575 | .0020 | 63 | 15,594 | .0056 |
| 54 | 23,261 | .0021 | 15 | 20,406 | .0059 |
| 46 | 32,905 | .0025 | 17 | 6,258 | .0063 |
| 56 | 7,899 | .0027 | 35 | 11,775 | .0067 |
| 63 | 116,670 | .0027 | 52 | 6,193 | .0071 |
| 70 | 13,427 | .0028 | 76 | 7,986 | .0078 |
| 34 | 11,223 | .0028 | 87 | 226 | .0078 |
| 13 | 40,786 | .0028 | 82 | 29,780 | .0081 |
| 18 | 11,358 | .0029 | 84 | 9,380 | .0086 |
| 42 | 11,015 | .0031 | 73 | 18,720 | .0088 |
| 65 | 7,610 | .0032 | 66 | 737 | .0105 |
| 71 | 20,141 | .0036 | 60 | 19,875 | .0107 |
| 48 | 5,893 | .0036 | 78 | 3,260 | .0111 |
| 25 | 18,661 | .0036 | 79 | 2,969 | .0126 |
| 20 | 3,727 | .0039 | 77 | 9,507 | .0129 |
| 14 | 27,771 | .0039 | 72 | 1,045 | .0134 |
| 12 | 27,121 | .0039 | 11 | 2,900 | .0159 |
| 50 | 18,759 | .0041 | 75 | 4,922 | .0174 |
| 7 | 37,426 | .0043 | 67 | 5,931 | .0177 |
| 26 | 20,075 | .0044 | 74 | 2,364 | .0185 |
| 9 | 17,642 | .0048 | 33 | 1,690 | .0215 |
| 29 | 12,428 | .0048 | 83 | 3,292 | .0634 |
| 30 | 3,489 | .0048 | 88 | 422 | .0942 |

SHEEP

| Firm No. | Number of head | Interest | Firm No. | Number of head | Interest |
|---|---|---|---|---|---|
| 19 | 741 | $0.0003 | 12 | 2,450 | $0.0028 |
| 81 | 6,196 | .0007 | 7 | 1,295 | .0031 |
| 59 | 191,587 | .00076 | 73 | 3,770 | .0031 |
| 44 | 248,022 | .00084 | 16 | 359 | .0033 |
| 54 | 565,861 | .00096 | 77 | 1,532 | .0034 |
| 55 | 2,947 | .0012 | 17 | 439 | .0037 |
| 13 | 5,687 | .00137 | 4 | 1,383 | .0038 |
| 56 | 4,924 | .0014 | 76 | 1,386 | .0038 |
| 63 | 24,716 | .00144 | 84 | 103,847 | .0039 |
| 5 | 205,880 | .00145 | 66 | 283 | .0044 |
| 61 | 638 | .0016 | 78 | 3,432 | .0046 |
| 70 | 2,484 | .0016 | 1 | 42,372 | .00492 |
| 46 | 7,002 | .0017 | 33 | 805 | .00498 |
| 87 | 93,327 | .00175 | 20 | 511 | .0052 |
| 15 | 3,805 | .0018 | 82 | 1,927 | .0052 |
| 65 | 1,244 | .0018 | 75 | 2,487 | .0062 |
| 18 | 2,732 | .0020 | 79 | 2,237 | .0062 |
| 25 | 3,087 | .00212 | 53 | 534 | .0063 |
| 62 | 3,063 | .0022 | 29 | 734 | .0068 |
| 26 | 2,344 | .00229 | 11 | 175 | .0084 |
| 117 9 | 598 | .0023 | 37 | 321 | .0084 |
| 67 | 300 | .0023 | 14 | 5,916 | .0086 |
| 35 | 40,948 | .00245 | 33 | 805 | .00947 |
| 6 | 1,220 | .0026 | 83 | 1,545 | .0235 |
| 82 | 4,081 | .0026 | | | |

It is found that the following are reasonable allowances per head on account of interest:

$.015 per head as to cattle and calves.
$.007 per head as to hogs.
$.004 per head as to sheep.

## Profits

159. In addition to producing reasonable per head costs incident to the handling of the different species of livestock, reasonable rates should provide also a per head profit, that is, compensation for management and the carrying of uninsurable risk. The two cooperative market agencies and some of the other respondents are managed by employees. The remuneration received by employee-managers gives some indication as to what efficient management costs. In 1929 two of the respondent firms had employee-managers who did no selling. The cost of management was 92 cents per car in the case of one, and 99 cents in the case of the other. In 1931 the same two firms were paying a dollar per car and 80 cents per car. A per head allowance on the basis of one dollar a car as to each species has been made on account of management.

160. The risks assumed by respondents may be said to fall roughly into three general classes. First, those against which insurance actually is carried by at least some of the respondents. Second, those of such a nature that insurance against them is conceivable, though not actually obtainable. Third, those involving a decline in, or cessation of respondents' businesses. The

first class has been covered by an allowance in the reasonable cost under the item "insurance."

161. The second class comprises whatever liability respondents assume when they sell livestock, the title to which is defective; errors entering into accounting processes; failure of purchasers to make payments; litigation arising on account of bank failures; freight undercharges; and sales of diseased or defective
118 livestock. The experience of the respondents as reflected in the audits of their books and accounts for the years 1929 to 1931 indicate that the losses suffered on account of the risks of this class amount to only a few cents per car. A per head allowance on the basis of 10 cents per car as to each species has been made on account of this class of uninsurable risk.

162. The third class consists of the danger that, through economic changes or failure of those in charge of the businesses properly to conduct them, the volume of business enjoyed may decline even to the point where it becomes impracticable to continue the conduct of the business. It seems quite clear that nothing should be included in the rates to cover risks or losses due to bad management. It may be that the same is true of risks and losses arising from economic changes. But whoever should bear these risks there is no practicable way of appraising them. The rates hereinafter prescribed represent something more than the reasonable cost plus reasonable profit. That something consists of a substantial spread between the total of the reasonable costs and profits as found and the rates as prescribed, and is more than the amount reasonably to be allowed to cover such errors and omissions as may have crept into the rate-making process.

## Summary of Reasonable Selling Costs Plus Reasonable Profits

163. A summary of the foregoing findings as to reasonable per head costs and reasonable profits for selling each species of livestock arriving at the Kansas City market is as follows:

| | Cattle and calves | Hogs | Sheep |
|---|---|---|---|
| Salesmanship | $.1379 | $.0353 | $.0140 |
| Yarding Salaries | .0750 | .0300 | .0080 |
| Yarding Expenses | .0140 | .0060 | .0004 |
| Office Salaries | .0525 | .0300 | .0100 |
| Office Expenses | .0300 | .0175 | .0060 |
| Business Getting and Maintaining | .0450 | .0180 | .0060 |
| Administrative and General Expenses | .0330 | .0200 | .0080 |
| Insurance | .0070 | .0025 | .0013 |
| Interest | .0150 | .0070 | .0040 |
| Total Cost | .4094 | .1663 | .0536 |
| Profit: | | | |
| To cover management | .0350 | .0133 | .0040 |
| To cover uninsurable risks | .0035 | .0014 | .0004 |
| Total reasonable cost and reasonable profit | $.4479 | $.1810 | $.0580 |

119 164. The audits covering the respective years 1929 and 1931 show, as a rule, only slight differences in the expenses of the respondent firms who operated in both of those years. There occurred, too late to be reflected in the audits for 1931, increases in certain of respondents' lesser expenses, such as postage and taxation, but through salary and wage cuts, also made too late to be reflected in the audits, there occurred considerable decreases in one of the major expenses of the business. It follows, therefore, that the above-stated costs cover the situation as it existed before the depression brought about reductions in expenses.

## Buying Costs

165. Most of the respondent commission firms and all of the respondent order buyers are engaged in the buying of livestock on a commission basis. The commission men consider their buying activities as supplementary to their selling activities. Some of the salesmen also buy. In some firms there are those employed as buyers only. For the most part the same personnel employed in one activity is also engaged in the other. This is particularly true with respect to the office and yard forces. Most of the items of costs incident to the business of the commission firms are incurred jointly in selling and buying. Their unit costs for buying are the same in amount as those shown above for selling, except as to the items for salesmanship and for interest.

166. The record indicates that in the normal course of business a competent buyer can buy as many animals of a species as an equally competent salesman can sell. This fact, coupled with buying salaries paid, indicates that the cost to the respondent commission men for buying a unit of livestock is somewhat less than the cost of selling a like unit. Somewhat more capital is needed in the buying of livestock than in the selling of it. The interest cost is, therefore, somewhat greater.

167. An analysis of the costs incurred by those respondents engaged solely in the order buying business leads to the conclusion that their unit costs for buying do not vary greatly from those incurred by the commission men in their buying activities.

168. On the basis of all the facts of record and the inferences to be drawn from the record, it is found that the rates
120 charged for buying livestock on the Kansas City market should not exceed those for selling livestock.

## XXI—Rate Structure

169. Livestock does not arrive at market in standard units. It may arrive in lots of from one to many head. On the one hand

such consignments may be of the same grade and may sell at one price, and require only one draft; on the other hand, it may consist of many classes sold to various buyers and require numerous weight drafts. Obviously, the work occasioned in handling livestock under such circumstances will vary greatly and the cost of performing the service on different consignments will vary also. A tariff of rates and charges constructed to meet each variation and to assess precisely the cost occasioned by handling each consignment against that particular consignment, would be unduly complex. A schedule of rates which attempted to do exact justice by every consignment would be so complex as to be difficult of interpretation and impracticable of application. A tariff simple enough to be practicable and easy of application will work some inequities in some individual cases. A reasonable schedule of rates should do as nearly exact justice as is practicable. Therefore, the rate maker's problem is to find a structure which, when applied to the particular businesses under consideration, will avoid as far as possible unwieldy complexity on the one hand and on the other a simplicity which brings about too many arbitrary distinctions and too much inequity. From time to time attempts have been made to smooth out all arbitrary distinctions. The result has been not only a complexity undesirable in itself but also the creation by such complexity of new inequities. It is recognized, therefore, that any tariff structure which may be adopted can be applied to circumstances which, though not unique, are unusual, and thereby shown to work inequities. Bearing this in mind, balancing advantage against disadvantage, it is believed that a tariff structure only sufficiently complex to avoid serious inequities with respect to normal transactions is to be preferred.

170. Except as to Tariff No. 3, hereinafter discussed, market agency rate schedules at Kansas City have in the past been based quite generally upon the carlot of livestock as the unit of charge.

121 The reason for this has been that the carlot has been the unit of handling. Until comparatively recently practically all the livestock handled by market agencies at the Kansas City stockyard arrived there in railroad cars. The sales pens in the stockyard were constructed to hold one carlot comfortably and conveniently. It was the custom of buyers to buy by the carlot. In probably the majority of instances the single carlot was synonymous with the single consignment. With the growth of the practice of bringing livestock to market by motor truck and the increasing custom of buyers to purchase animals in less than carlots, as hereinbefore described, these conditions changed.

171. The filing by the great majority of the respondents of their Tariff No. 3 raises in this proceeding an issue not heretofore present in commission rate determinations made by the Secretary of

Agriculture, namely, whether the rates prescribed by this order should be set up in the structure heretofore customary, or according to that desired by the respondents last above referred to, or in some modification of one or the other of those structures.

172. The record here shows that the consignment is the unit of handling. The consignment is, therefore, the unit of cost. Many items of cost attach to the consignment is substant. 'ly the same amount, regardless of whether it contains many or few animals. The identity of a consignment must be preserved throughout its entire handling in the stockyard; it must be separately accounted for by the office force. Some items of cost tend to increase as the number of animals in a consignment becomes greater, but probably none increase in direct proportion.

173. Certain modes of arrival of animals at the stockyard affect the number of animals contained in the respective consignments. On the whole, a thousand head of animals arriving by truck will represent more separate consignments than a similar number arriving by rail. This fact has caused it to be said that the so-called "truck-ins" are more expensive to handle than the rail arrivals, but analysis of the costs shown in the record, as well as the opinions of competent witnesses therein contained, compel the conclusion that it is not the mode of arrival but the average size of the consignment which fixes the per head cost of handling the animals.

To base differentials in rates upon the modes of arrival is
122 therefore to attack the problem indirectly rather than directly, and produces different charges for handling the same species, number, weight, kind, grade, and quality of animals in two separate consignments merely because one happened to come to the market in a vehicle propelled by gasoline and the other is one drawn by steam.

174. The various commission rate tariffs in force from time to time at the Kansas City stockyard since the effective date of the Packers and Stockyards Act, 1921, are in the record. At least since that date the tariffs have always contained some rates stated on a head basis, and they have also recognized at least one rate distinction based on differences in weights. References is here made to the common provision that bovine animals weighing on the average 400 lbs. or less, and called "calves," are handled at rates considerably lower than those weighing more than 400 lbs., and called "cattle." That this is purely a weight distinction becomes apparent when it is borne in mind that it is the average per head weight of the entire draft which controls and that thereby a 1,500-lb. bull may become a calf by being weighed together with a sufficient number of bovines weighing from 200 to 300 pounds each.

175. In the filing of Tariff No. 3 respondents sought to readjust the structure of their schedules to the changed character of their business. In the formulation of this new tariff they tested certain suggested schedules by practical applications of them to the transactions they actually were handling. By a process of trial and error they arrived at a tariff which, though not going so far as some of them advocated, nevertheless constituted a step in the direction of a structure better fitted to the business of today than was the structure which it replaced.

176. At the last hearing in this proceeding this tariff structure was subjected to close scrutiny and analysis. The evidence compels the conclusion that while some inequities would result from an application of the principles upon which it was based, nevertheless, on the whole, such inequities are both fewer and less severe than those which would result from the application of the principles which had been discarded. Certain characteristics of this Tariff No. 3 appear to do violence to the basic principles upon which it rests. There is, for instance, no difference in the rates for calves or cattle coming in by truck, as compared with
123 those arriving by rail, but 5 cents more per head is charged for truck-in yearlings than for those coming in railroad cars, and quite generally the rates on truck-in sheep are higher than for those coming by rail. Also, a lower rate is made for so-called "yard sales" or "seconds," than for freshly arriving livestock.

177. The tariff structure adopted in this order eliminates these and other inconsistencies, but otherwise follows in structure the aforesaid Tariff No. 3. It contains for the bovine species a weight class known as "yearlings," and a weight distinction as between light swine or pigs and heavy swine or hogs. In recognition of the fact that, as heretofore stated, the cost of handling a consignment does not increase directly in proportion to the increased number of head in the consignment, the tariff structure here adopted uses a consignment charge graduated according to the number of head in the consignment.

178. That which has been said with respect to the structure of the schedule for selling applies also to the structure for buying.

## XXII. The Reasonableness of Existing Rates

179. Upon the basis of the reasonable costs hereinbefore determined, and upon a consideration of the entire record, it is found that respondents' schedules of rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory.

## XXIII. Reasonable Rates

180. Upon the basis of all the foregoing and the entire record, it is found that rates not in excess of the following are schedules of just and reasonable rates:

### Article I—Definitions

Calves are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

Yearlings are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

124 Cattle are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 801 pounds or over.

Pigs are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

Hogs are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

A Draft is all those animals in one consignment weighed as a single sales or purchase classification.

A Consignment, for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day, provided, however, that when the livestock of several owners arrives in one car, and in not more than one car, each species in that carlot shall be considered as one consignment.

A Consignment, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

A Person is an individual, a partnership, a corporation, and/or an association of any such acting as a unit.

### Article II—Selling Charges

#### Section A—Calves, Yearlings, and Cattle

| | Per head |
|---|---|
| Calves: | |
| Consignments of one head | 40¢ |
| Consignments of more than one head: | |
| 1 to 20 head, inclusive | 25¢ |
| Each head over 20 | 15¢ |
| Yearlings: | |
| Consignments of one head | 80¢ |
| Consignments of more than one head: | |
| 1 to 20 head, inclusive | 45¢ |
| Each head over 20 | 25¢ |
| Cattle: | |
| Consignments of one head | 80¢ |
| Consignments of more than one head: | |
| 1 to 20 head, inclusive | 70¢ |
| Each head over 20 | 50¢ |

125

SECTION B—SWINE

| | |
|---|---|
| Pigs: | |
| Consignments of one head | 35¢ |
| Consignments of more than one head: | |
| 1 to 40 head, inclusive | 20¢ |
| Each head over 40 | 5¢ |
| Hogs: | |
| Consignments of one head | 35¢ |
| Consignments of more than one head: | |
| 1 to 4 head, inclusive | 25¢ |
| Each head over 40 | 5¢ |

SECTION C—SHEEP OR GOATS

| | |
|---|---|
| Sheep or Goats: | |
| Consignments of one head | 35¢ |
| Consignments of more than one head: | |
| For the first 10 head in each 300 head | 25¢ |
| For the next 50 head in each 300 head | 15¢ |
| For the next 60 head in each 300 head | 5¢ |
| For the next 130 head in each 300 head | 2¢ |
| For the next 50 head in each 300 head | 1¢ |

## ARTICLE III—EXTRA SERVICE CHARGES

The following extra service charges are applicable to all species:

| | |
|---|---|
| For each additional weight draft over 3, on account of sales classification | 15¢ |
| For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1 | 5¢ |

## ARTICLE IV—BUYING CHARGES

The rates for buying livestock of the various species shall not be in excess of those for selling like species.

## Order

It is Ordered that the respondent market agencies, and each and every one of them, on and after 30 days from the date
126 hereof, cease and desist from demand or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges now on file with the Secretary of Agriculture.

It is Further Ordered that on and after 30 days from the date hereof neither the respondent market agencies nor any of them shall publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge hereinbefore determined to be just, reasonable, and nondiscriminatory for the furnishing of such service.

It is Further Ordered that at least ten days prior to the date upon which this order becomes effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and

Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Kansas City Stockyards, Kansas City, Missouri, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just, reasonable, and nondiscriminatory for such service.

It is Further Ordered that a copy of this order be transmitted by registered mail to each and every one of the respondent market agencies.

In Witness Whereof the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 14th day of June 1933.

HENRY A. WALLACE,
*Secretary of Agriculture.*

127 *Exhibit B to petition*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

2328—Docket No. 311

SECRETARY OF AGRICULTURE, COMPLAINANT

*vs.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVE STOCK COMMISSION COMPANY, ET AL., RESPONDENTS

*Petition for Reinvestigation and Rehearing*

Comes now Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company, a respondent herein, and respectfully petitions the Secretary of Agriculture that the Order under date of June 14, 1933, signed by Henry A. Wallace, as Secretary of Agriculture, in the above entitled proceeding be withdrawn and for naught held, and that these proceedings be reopened for further hearing and reinvestigation of the matters and things referred to in the Order of Inquiry and Notice of Hearing, and in said Order mentioned, for the reasons hereinafter stated:

I

Because the said Order purports to be based and predicated upon conditions shown by the evidence to have existed in respect to the business transacted by this respondent as a registered market agency at the Kansas City Stockyards in the year 1931 and prior thereto, and in the period intervening between December 31, 1931, and June 14, 1933, the date of said Order, and particularly during the year 1933, important changes have taken place in the conditions surrounding the operations of respondent as a market agency at the Kansas City Stockyards of such a nature as to cause, so far as the determination of the matters in said Order of Inquiry referred to are concerned, the evidence so taken and considered to be inaccurate, incomplete and in certain respects misleading as an expression of the present or future conditions as to revenues or costs affecting respondent's business. Changes occurring since the year 1931 affecting the issues in this proceeding are in part as follows:

128 Reduction in Value of Dollar

(1) There has been in the year 1933 as a result of governmental action a substantial reduction in the purchasing power and value of the dollar in which the amount of rates and charges is expressed by the Order. The effect of this reduction, amounting as of this date to approximately 20 per cent, is given no consideration by the Order. It has already resulted in a general advance in prices and in the immediate future will inevitably further increase the expense of operating the business of respondents.

(2) The audits made by the government accountants in this proceeding disclose that in many classifications of service, the wages paid to employed workers in 1931 were very meager. These wages have since been substantially reduced and are now at the absolute "starvation point" in view of recent increases in "cost of living." The hours of work are long. Enforcement of the Order would demand further reduction in personnel and wages. This would not be in the interest of the shippers of live stock, or in harmony with the spirit and purpose of recent Federal legislation and utterances of the President of the United States. The President in his radio address on May 8, 1933, said:

"The administration has the definite objective of raising commodity prices to such an extent that those who have borrowed money will, on the average, be able to repay that money in the same kind of dollar which they borrowed.

"We do not seek to let them get such a cheap dollar that they will be able to pay back in great deal less than they borrowed.

"In other words we seek to correct a wrong and not create another wrong in the opposite direction. That is why powers are being given the administration to provide, if necessary, for an enlargement of credit, in order to correct the existing wrong. These powers will be used when, as, and if it may be necessary to accomplish the purpose."

Chicago Rates Undetermined

(3) A hearing is now being held at the Chicago Union Stock Yards under order of the Secretary in respect to the rates and charges of market agencies at that stock yards. As shown by the evidence taken at the hearings in this proceeding, the rates and charges of market agencies at Chicago were, at the outset of the inquiry, substantially in excess of rates and charges for similar services of this respondent. Since the reduction of approximately ten per cent made by this respondent in 1932 the rates and charges at Chicago are approximately 25 per cent in excess of the rates and charges of respondent at Kansas City, and in respect to many common or usual consignments of livestock, more than 33⅓ per cent in excess of respondent's rates and charges. The reduction proposed by the Order in respondent's rates, which are fixed at levels substantially below similar rates at any other market, would so disturb and render non-uniform the rates and charges at these two important competitive markets as to demand and suggest deferment of the effective date of the order herein, and a rehearing to the end that consideration might be given by the Secretary after reviewing the evidence taken in Chicago to the subject of uniformity of rate structure at the two competitive markets.

129 (4) The undisputed evidence at the hearings in this proceeing disclosed higher market agency operating costs at Kansas City than at others of the five leading competitive markets due to greater variability of volume of receipts of livestock at Kansas City; greater diversity in grades of livestock received; delivery of trucked-in livestock to market agencies at unloading chutes instead of at pens assigned to agencies; the greater area from which receipts are drawn; the large proportion of stocker and feeder cattle handled necessitating double contacts with sellers in the west and buyers in central and eastern portions of the United States; and increased expenditure of money and effort in connection with appraising, supervising, and pasturage of livestock en route to market.

(5) The evidence showed that peak receipts by month or week at Kansas City were equal in volume as to cattle to peak receipts by month or week at Chicago, although the average volume at

Kansas City was approximately fifty percent of the average at Chicago. Despite the higher prevailing rates at Chicago as the Order states, the percentage of livestock marketed from the territory tributary to Kansas City at Chicago, as well as at other markets with higher rates and charges, has been increasing.

(6) A statement showing the rate differentials on representative consignments of cattle between the rates approved by the Order and those now in effect at other markets follows:

| | Veal calves under 400# avg. car 75 head | Stk. calves under 400# avg. car 60 head | Fed. yrlgs. 660-800# avg. car 35 head | Stkr. yrlgs. 400-700# avg. car 45 head | Fat hvy. cattle 1300-1400# avg. car 20 head |
|---|---|---|---|---|---|
| Secy's order 7-14-33 | 13.25 | 11.00 | 12.00 | 14.00 | 14.00 |
| St. Joseph | 16.50 | 16.50 | 16.50 | 16.50 | 13.00 |
| St. Paul | 15.50 | 15.50 | 15.50 | 15.50 | 13.00 |
| Omaha | 15.00 | 15.00 | 15.00 | 15.00 | 15.00 |
| Chicago | 22.00 | 20.00 | 21.00 | 21.00 | 17.00 |

| | 2 avg. cars 150 head | 2 avg. cars 120 head | 2 avg. cars 70 head | 2 avg. cars 90 head | 2 avg. cars 40 head |
|---|---|---|---|---|---|
| Secy's order 7-14-33 | 24.50 | 20.00 | 20.75 | 25.25 | 24.00 |
| St. Joe | 33.00 | 33.00 | 33.00 | 33.00 | 26.00 |
| St. Paul | 31.00 | 31.00 | 31.00 | 31.00 | 26.00 |
| Omaha | 30.00 | 30.00 | 30.00 | 30.00 | 30.00 |
| Chicago | 44.00 | 40.00 | 42.00 | 42.00 | 34.00 |

130 Gross Income of Respondents Already Down 40% Since 1929 and Further Reduction as Contemplated by Order Would Be Confiscatory

(7) Comparisons applying to 40 of the respondents (exclusive of cooperatives) doing the largest volume of business, have been made of gross revenues received during the year 1932 and during the first five months of the current year (1933) with the gross revenues received in the prior years of 1929 and 1931 as shown by Government audits of the business of the same respondents. Inclusion of the two cooperative agencies which handle approximately ten percent of the total volume of livestock receipts would not substantially alter the percentages of decrease. Gross revenues as compared with 1929 decreased 13% in 1931, 24.54% in 1932 and for the first five months of 1933 were 42.34% less than the gross revenues for the first five months of 1929. The income of these respondents derived from selling commissions for the first five months of 1933 was 18.96% less than their income during the first five months of 1932. If comparisons were made with gross revenues during the years prior to 1929 the percentage of reductions would be much greater. This indicates that these respondents, faced with higher living costs as they are, have taken

even greater punishment through reduction of income than the stockmen whom they represent at the market.

(8) This respondent has reduced expenditures in every possible direction consistent with retaining in the public interest efficiency in the rendition of stockyard services. Certain overhead costs such as rent, utility service, transportation, taxes, etc., which the record shows have increased on an average of more than 200% since 1913, respondent is powerless to reduce in amount if expected to continue in business. After all possible expense reductions have been made and all practicable economies effected, the owners of respondents' business are now receiving no fairly compensatory return for the time, effort, and money expended and used therein. The rates proposed by the order would further reduce gross revenues of this and the other respondents mentioned by an average of not less than 15.23 percent in respect to cattle and calves; by not less than 2.49 percent in respect to hogs; and by not less than 11.90 percent in respect to sheep. Upon cattle weighing from 400 to 800 lbs. the reductions amount to 29.28 percent of present revenue. It is manifest that such a reduction superimposed upon reductions already in effect under present conditions would either compel respondent to cease business or impair the efficiency of the stockyard services rendered by respondent. Enforcement of the order as made would produce a result entirely out of harmony with the policy of the present administration as announced by the President of the United States in his radio address delivered May 8, 1933, when he said:

"Further legislation has been taken up which goes much more fundamentally into our economic problems. The farm relief bill seeks by the use of several methods, along or together, to bring about an increased return to farmers for their major farm products, seeking at the same time to prevent in the days to come disastrous overproduction which so often in the past has kept farm commodity prices for below a reasonable return. This measure provides wide powers for emergencies. The extent of its use will depend entirely upon what the future has in store.

131 "Well-considered and conservative measures will likewise be proposed which will attempt to give to the industrial workers of the country a more fair wage return, prevent cutthroat competition and unduly long hours for labor, and at the same time to encourage each industry to prevent overproduction."

Impairment of Selling Efficiency Injures Stockmen

(9) The effect of loss of selling efficiency is demonstrated beyond question by respondent's Exhibit #248. As a result of the greater rapidity of salesmanship demanded in handling drive-ins

as compared with rail consignments, hogs arriving by rail sold at an average of $1.70 per head more than those delivered by truck. Trucked-in hogs average higher in grade and quality at Kansas City than those received by rail. This difference is eight times the present commission charge. Important differences exist in the per head selling price of other species in favor of the rail consigments, but no accurate comparison could be made as to the relative quality of the average receipts of those species as between rail and drive-in consignments. The evidence is clear and positive. Producers of livestock who testified at the hearing were well justified in making the statements, repeatedly emphasized, to the effect that they were more interested in the efficiency of salesmanship than in the amount charged therefor. This is the practical consideration which must be given the greatest weight in determination of livestock commission charges. One man might sell a very large volume of livestock in a day on any public market if he is at all willing to sacrifice the interest of his principals. The most inexperienced, or the least energetic, or the dishonest agent can consummate sales with greater rapidity than the salesmen of experience, energy, and integrity. The stockman knows that cheap or underpaid salesmanship is costly salesmanship.

### Other Changes Since Hearing

(10) The abolition at the Kansas City Stock Yards as of July 1, 1933, of the activities of the Bureau of Markets in respect to livestock, and the order of the Farm Credit Administration on June 5, 1933, relating to the consignment to affiliates of the National Livestock Marketing Associations, of livestock upon which Regional Agricultural Credit Corporations have loaned money, have served to radically alter the conditions upon which the Order as made was predicated, and under which the respondents must henceforth operate.

### Revenue Yield of Rates Undetermined by Order

(11) It is highly important that the Secretary be correctly advised as to the effect the rates and charges approved will have upon respondent's income. The evidence disclosed that this effect can only be determined through an actual application of the rates and charges to the consignments handled by respondent during a representative period. At the time the present schedule of this respondent was filed in May 1932, as shown by the evidence, accountants for the Secretary estimated a reduction of only four per cent in the yield of those rates as compared with the
132 schedule theretofore in effect. Accountants for the respondents made an actual application of the new schedule to the

business for the respondents for the year 1931. This demonstrated that the actual reduction, if these rates had been in effect during that year, would have been 9.2 per cent. It now appears through the actual use of the new schedule, due to the changing consist of the volume of the business handled, depreciating its revenue-producing ability, that the percentage ascertained by respondent's accountants was less than actually experienced. The actual operations of forty of the respondents handling the largest volume of business, exclusive of cooperatives, shows that in the first five months of 1933, when the new schedule was in effect, their gross income from selling rates was less by 18.96% than their total gross income from selling commissions during the same five months of 1932, when the former schedule was in effect. A very small portion of this reduction in income was due to a diminished volume. A change in the consist of the business handled, from rail consignments to truck-ins, for example, increased the effect of the reductions contained in the schedule as compared with the reduction that would have occurred had the new schedule applied to the particular volume handled in 1931

(12) The accountants for the Government did not assemble through the audits made by them information which enabled them to apply to actual consignments a tariff similar in form and structure to that approved by the Order. Advantage was not taken of the offer of the respondents to permit access to records in their possession and information assembled by their accountants to test the effect of the proposed schedule. It is therefore in the public interest that the Secretary conduct a further investigation in order that he may be fully and accurately advised as to the effect upon respondent's income, and the efficiency of the service rendered by them, of the rates and charges approved as just and reasonable by the Order.

(13) By reason of the foregoing, respondent requests and desires a rehearing and reinvestigation of the matters in said Order of Inquiry herein referred to and the opportunity to introduce further evidence in respect to the matters and things in this section of this motion referred to, in order that justice may be done herein and that the Schedule of Rates and Charges under inquiry may be approved in amounts not less than those stated therein, as well as to form and structure, as a just, reasonable, and nondiscriminatory Schedule of Rates and Charges.

II

(14) The findings of fact contained in the Order overlook relevant and important evidence taken at the hearings, consideration of which is absolutely essential to a fair determination of a just, reasonable, and nondiscriminatory schedule of rates and charges.

### Market Developed Under Higher Rates

(15) The findings of fact contain the statement that the
183 public Stockyards at Kansas City was established in 1871; that demand by the producers of livestock for the services of representatives to sell their livestock resulted in the establishment of market agencies and a Live Stock Exchange, but overlook the undisputed testimony showing that at the outset and through the years of greatest development of the market the rates and charges of market agencies were established on a unit basis determined in such a manner as to yield a gross revenue to such agencies approximately equal to 2% of the gross proceeds of livestock handled by them; that the gross revenue yield of the rates under inquiry, even at the extraordinarily low prices for livestock existing in the years 1931 and 1932, and despite the increased costs incident to greatly reduced headage per sale yield, a total gross revenue of less than 2% of the gross proceeds of the sale of such livestock.

### Rates Less Than Charges for Selling Other Agricultural Commodities—Work and Responsibility Greater

(16) The Order fails to refer to or in any manner reflect in the conclusions therein contained the undisputed evidence showing that at all the times to which the evidence at the hearing related, the rates and charges of this respondent and other respondents under inquiry expressed in percentage of sales proceeds were less in amount than commissions charged in respect to the similar sale or handling of any other agricultural product despite the fact that the service on a unit basis, due to the variability in the grades and prices of the commodity handled and its perishable character, involves greater expenditure of time, money, and effort per unit handled, and requires a higher degree of professional proficiency than in respect to any other of such compared commodities. The Order fails to give weight to the established practice of relating individual rates to the value of the product handled.

### Wartime Rate Increases Insignificant

(17) The Order fails to refer to or reflect in its conclusions the undisputed evidence taken at the hearings showing that, despite increased costs during the War period from 1913 to 1919, the rates and charges of these agencies were increased by only 10% over the 1913 level, whereas increases occurred in cost of living, in farm wages, in general hourly wages, in livestock prices, in wholesaling and processing costs in respect to livestock and its products, in meat retailing costs, in transportation charges, in brokerage or

commission charges on other agricultural commodities averaging approximately 200%. The Order also fails to refer to the fact that the rates and charges found to be reasonable are in many instances less than the prevailing charge for the rental or use of the pens in which the livestock sold is yarded.

Schedule in Force at Commencement of Proceedings Established by Secretary After Hearing Held During Low Price Period

(18) The finding of fact set forth in Paragraph 23 of
134 said Order, referring to the Schedule of Rates and Charges, and in effect from and after January 1, 1926, fails to state, as shown by all the evidence, that said Schedule of Rates and Charges was formulated and approved by the Secretary of Agriculture after a hearing upon notice of inquiry, and this respondent ordered and directed to file same with such Secretary; that the rates and charges found by said Order to be unjust and unreasonable in amount were rates and charges under the Schedule filed May 11, 1932, accomplishing a substantial reduction in the gross revenues derived under the Schedule of Rates and Charges theretofore established by the Secretary, and determined after hearing to be just, reasonable, and nondiscriminatory as applied to conditions much more favorable to respondent as to net operating income than those existing from 1929 to 1933. The year 1923 was used as a test period in the former order. In 1932 receipts of cattle and calves were 42.20% less, of hogs 56.85% less, and of sheep 9.9% more than in 1923.

Registration of Additional Agencies Accepted Under Act Regardless of Qualifications or Public Necessity

(19) The Order, in Paragraph 129 thereof, states that the Packers and Stockyards Act, 1921, does not clothe the Secretary with authority to determine how many agencies would be required to handle business at the Kansas City Stockyards properly, but fails to state that the records on file in the Secretary's office and offered in evidence disclose that the Secretary has registered as market agencies at the Kansas City Stockyards as competitors of this respondent registrants who had previously been expelled from membership in the Kansas City Live Stock Exchange for confessed misapplication and embezzlement of the proceeds of sales of livestock, and has compelled, through court proceedings, the said Exchange to extend to such registrants and other additional registrants not members of said Exchange all of the facilities of said Exchange, including the services of the Clearing House, participation in the blanket fire insurance policy maintained by the

Exchange, and the hog dockage and inspection service operated by the Exchange. The Secretary not only established the rates first placed under inquiry but has deprived the Exchange, under said Act, of the right, power, or authority to control or regulate the number or personnel of those engaged in business as market agencies at said Stockyards.

Market Practice Agreement

(20) The fact that the Secretary, by and through his duly authorized representatives, assisted in the preparation and formulation of the Market Practice Agreement offered in evidence, and participates in the enforcement thereof, whereby there are approved and established rules in respect to the character and amount of solicitation and business-getting efforts and expenses similar in purport and effect as to nonmembers of the Exchange as those in effect under the rules of the Exchange as to member agencies such as this respondent is not set out or referred to in said Order.

135 Private Stockyard Operation by Packers Increases Marketing Costs

(21) The Order, in Paragraph 50 thereof, states that the demand for livestock at Kansas City, particularly for hogs, is greater than the supply of livestock on the public market and sets forth the increasingly large number of hogs received by packers direct at their plants through private stockyard operation during the period from 1929 to August 1932, but fails to mention the fact that the undisputed evidence disclosed that such purchases of livestock were made upon the basis and through the use of market prices for livestock determined upon the public market at Kansas City by and through the efforts of this and others of the respondents. Despite the fact that the benefit of using prices established by the public market at Kansas City was available to such purchasers, they did not, and do not now, bear any portion of the burden of costs of maintaining the Kansas City market which fall upon this respondent and others at the market. Unfair competitive methods and practices are employed by packers in connection with the making of such purchases to the detriment of the producers of hogs. (Report of Committee on Agriculture, United States Senate, Exhibit 2.)

Preferential Railroad Rates Protect Unfair Competition at Railroad Stockyards

(22) The Order states that livestock tends to move from producer to consumers by the most economical route, and that freight

rate structure or railroad transportation systems are the chief factors in delimiting trade territory (Paragraph 19). The Order fails to mention, however, the evidence in the record disclosing that in the early part of the year 1932 there were established differentials giving preferential rates to railroad stockyards at Prospect, Missouri, and Morris, Kansas, within eight miles of the Kansas City Stock Yards, and at many other railroad stockyard or concentration points in said trade territory amounting to many times the total of all marketing costs or charges for stockyard services at the Kansas City Stock Yards. The market privilege of reconsignment in transit with change of ownership on through billing was taken away from the Kansas City Stock Yards but remains available at the competing railroad stockyards. The conclusions of the Secretary ignore and fail to reflect or give any weight whatsoever to this situation and to its future effect upon the volume of business to be transacted by this and other respondents at the said Kansas City Stock Yards or to the obstruction which such preferences create to the flow of commerce in livestock through said stockyards.

## III

(23) The conclusions contained in the Order and expressed in the Schedule of Rates and Charges approved are predicated upon hypothetical standards of salesmanship performance not actually attained by this respondent or others of the respondents in the practical conduct and management of their respective businesses. Such standards of performance are not only contrary to all of the competent and credible evidence before the Secretary but would be manifestly impossible of attainment in the practical operation of the market without complete destruction of its present efficiency from the sellers' standpoint.

136 Salesmanship Standards Specified

(24) The Order in Paragraphs 142 and 143 states that it was reasonable to expect a salesman of cattle and calves to sell 29,000 head of cattle a year; a salesman of hogs to sell 85,000 head of hogs a year, and a salesman of sheep to sell 250,000 head of sheep a year. Each of such salesmen is presumed by the order in the subsequent formulation of costs to provide all of the services incidental but necessary to the selling operation customarily performed by these salesmen. Such services include the maintenance of contact with the owners of livestock prior to shipment; appraisal in the country; supervision en route to market either while on pasture, in Flint Hills, in feed lots, or at feeding stations; keeping informed as to the changing market conditions,

sorting, and grading the livestock after arrival; directing the attention of suitable buyers to the livestock; interviewing and consulting with the owners of livestock at the market or advising them of the results of the sale if away from the market; together with such other duties as are usually performed by competent and efficient salesmen.

### These Standards Unattained in Actual Operation

(25) The evidence discloses that no individual salesman of this respondent or any other respondent agency or salesman at any other public stockyards during the year 1931, or any other year, has reached or attained such a standard of performance and efficient salesmanship. The average number of head handled per salesman, either in the years 1929 or 1931, or any other year, of this respondent or of any other of the 60 respondents in this proceeding, is not shown by the evidence before the Secretary to have reached such a standard of performance or to have approached such standard.

### Would Create Inefficiency and Destroy Market

(26) There were engaged in 1931, as shown by the evidence, in the actual selling of cattle and calves 84 owner salesmen and 104 employed salesmen, a total of 188 trained, experienced, and competent men, who used all of their time in the performance of this function and in duties incidental thereto. These salesmen made 437,688 separate and distinct sales of cattle and calves totaling in number 2,284,207 head. If the conclusion reached in the Secretary's order was sound these salesmen should be reduced in number to a total of 78.77 men who would be required throughout the year to consummate sales of separate lots of cattle and calves, each of an average value of $242.78, at the rate of 8.9 sales per actual selling hour. This statement assumes the fact shown to exist by the record that the market at Kansas City is practically a four-day market and that each day has on an average three active selling hours. It further assumes a situation impossible of attainment in that it is based upon an absolutely even division of receipts among each and all of these salesmen. It ignores, likewise, the tremendous daily, weekly, and seasonal variation in the quantity of total receipts of cattle and calves. The effect of the Secretary's order would be to increase the amount of sales proceeds per salesman actually realized in 1931 from $905.55 per hour to $2,161.32 per hour. When the variability of
137 the grade and quality of the livestock is carried in mind and the fact that these salesmen, unlike ordinary salesmen,

determine the price to be asked for the commodity they sell, it is all the more manifest how unreasonable and impossible of consummation with efficiency is the standard set, and also how effective is the work now performed. Should the consummation of such a reduction in personnel be seriously attempted it is certain that a tremendous uproar of protest would arise from those who patronize the market. If accomplished and receipts of cattle and calves continue to arrive at the market, the result would be a staggering loss to shippers amounting to many times the total of all market charges. This is disclosed in the evidence showing the effect on selling efficiency of the greater rapidity of sales incident to the disposition of drive-ins, a subject which has been heretofore mentioned.

(27) The evidence shows that cattle salesmen in 1931 actually consummated 3.73 sales involving 19.47 head per hour. In view of the increased number of drive-in consignments of reduced headage, the changes referred to in the Order in the custom of buyers, it is submitted that the present standard of performance is all that can be reasonably expected without reduction of efficiency.

(28) In respect to hogs there were in 1931, 15 owner salesmen and 35 employed salesmen, a total of 50 salesmen, who disposed of 1,045,048 hogs. Upon the assumption contained in the Secretary's order the number of these salesmen would be reduced to 12.3. Each salesman would be required to make 13.48 sales per hour, each of an average value of $141.94. The actual number made in 1931 was 3.31 per active selling hour. The respondent whose records show the greatest rapidity of salesmanship in respect to hogs testified that on many occasions he had been unable to secure the most efficient salesmanship due to the overcrowding of work.

(29) There were engaged in 1931 in selling sheep four owners and eleven employes, a total of fifteen men. These salesmen sold 1,896,608 head, making 4.58 sales comprising 202.63 head per hour per salesman. Under the Secretary's Order the number of these salesmen would be reduced to 7.59, who would be required to make 9.05 sales per hour. The value per sale in 1931 was $235.80. The average number of head per sale was 44.24. Under the Order each salesman would be required to sell 400.47 head per active selling hour. The record discloses extremes in the daily, weekly, and seasonal variation in receipts of sheep. Circumstances require close and careful examination of each sheep sold in many instances. The mere statement that the result of the standard makes this average requirement shows how impossible of attainment with retention of efficiency such a standard would be. Accomplishment of the result demanded would be completely de-

structive of the sheep market in Kansas City and would create such an obstruction to the current of commerce in respect to sheep to the Kansas City Stock Yards as in and of itself to constitute a violation of the provisions of the Packers and Stock Yards Act of 1921.

138 IV

(30) The Order in failing to recognize as part of the reasonable cost of the operation of respondent's business the amounts actually expended in connection with the activities designated as "Business-Getting and Maintaining" by the Government accountants is clearly without supporting evidence, in conflict with the testimony of all witnesses at the hearings and constitutes unjustified invasion of the right of respondent to manage and conduct its business.

Expense Classification Misinterpreted

(31) The Order, in dealing with the expenditures classified under the title "Business-Getting and Maintaining" by the Government accountant, has inadvertently misconstrued and misunderstood the character of expenses so classified and dealt with this classification upon the theory that it included *only expenditures* incidental to obtaining, through advertising or other forms of solicitation, new business. As a matter of fact it included not only the expenses classified as "advertising" by the accountants but also all traveling expenditures such as expense incident to the operation of automobiles used in the business, all dues and assessments paid by market agencies for the support of the varied and essential activities of the Live Stock Exchange and also a proportionate part of the salaries of the salesmen representative of the time involved in appraising or supervising livestock en route to market. Under "advertising" was included as the major item of expense all circular market letters sent out by the respondents to inform shippers as to the condition of the market. It is evident from the Order that all of these expenditures were considered as comprising solely newspaper and magazine advertising and expense incident to the entertainment of prospective customers. The evidence shows conclusively that the total entertainment expense of all the 60 agencies sustained through the year was approximately $3,000 and that the total amount actually spent for advertising by all the agencies was less than $25,000.00. All of the witnesses testified that of the remainder of the expenditures so classified not less than 85% thereof were incurred as an essential part of the selling and buying operations on the market and in servicing of the livestock handled. It is therefore plainly evident that the Secretary through misinterpretation of the procedure

followed by the accountants and the actual meaning of the term "Business Getting and Maintaining" descriptive of this classification, disallowed expenditures actually incurred by this and others of the respondents necessary and essential to sound and economical management and operation of their respective businesses.

### Expenditures Now Disallowed Approved by Secretary When Incurred

(32) The evidence discloses that prior to the year 1929 there had been issued by the Secretary in Technical Bulletin 57 (Exhibit 18) of the Department of Agriculture, instructions and directions to those of the respondent market agencies doing business on the cooperative plan and in competition with this respondent
139 for business at the Kansas City Stock Yards to engage in all of the activities in respect to advertising and getting business this respondent is shown to have engaged in, and incur expenses incident thereto greater in amount and more varied in character than those actually incurred by respondent disallowed in whole or in part by the Secretary in this Order.

### Expense Eliminations by Auditor

(53) The Order apparently overlooks the fact that the Government auditor in preparing the costs dealt with in the Order eliminated therefrom an item of $3,432.09 expended by the respondents under the title "Charity and Donations," practically all of this expenditure being made in support of a community chest or general charity campaigns conducted by the Chambers of Commerce of Kansas City, Missouri, and Kansas City, Kansas. This elimination was improperly made inasmuch as it constituted a necessary obligation of this respondent and the other respondents as incidental to the maintenance of its business in said cities. There was also eliminated by the auditor and not considered by the Secretary an item of $13,962.98 representing losses of the various respondents incident to the refusal of purchases by patrons of respondents. This constituted an expense incident to the business which should have been recognized as a part of the reasonable cost of operation.

### Solicitation Costs Not Excessive

(34) All of the evidence of the hearings disclosed that the expenditures for advertising and other expenses incident to the solicitation of business were actually made by this and others of the respondents in good faith in the exercise of sound business judgment for proper purposes and were not excessive in amount or unnecessary in character.

### Exchange Limitations on Solicitation

(35) All of the evidence before the Secretary shows that the respondent obeyed and conformed to rules of the Kansas City Live Stock Exchange restraining and limiting expenditures by respondent and other respondents, members of said Exchange, in the entertainment of shippers or buyers of livestock, in the use of telephone or telegraph facilities for the solicitation of business, in the expenditure of time away from the market, in using the radio for advertising purposes, and other activities normally incident to the solicitation of business.

### Competitive Conditions Render Essential Increased Business-Getting Expenditures

(36) The Order shows upon its face although it does not recognize the necessity for greater instead of less business getting effort and expenditure on the part of this respondent and the other respondents. It is shown that marketings of livestock from territory tributary to the Kansas City market have been increasing in volume and percentage at Chicago and St. Louis where commission rates were much higher than those in effect at Kansas City. Governmental agencies have extended financial assistance to a cooperative marketing association at Kansas City, one of the respondents, in order to indirectly finance business-getting efforts of
140 similar character by such association. Undisputed testimony discloses the intensity of efforts of packers to divert livestock from the public market to their private stock yards or concentration points. In order that the flow of livestock through the market be maintained in accordance with the purpose of the Packers and Stockyards Act it is essential that these efforts and this competition be adequately met by counter effort and expenditure. The record clearly indicates the necessity for greater rather than less expenditure of time, effort, and money to attract receipts of livestock.

(37) There is no principle of business management more universally recognized today than that the industry or individual business enterprise which fails to adequately advertise the utility and value of its service or product will surely perish in the stress of modern competition. The correlative principle that lower, not higher, unit costs are secured by well-considered advertising programs and sound promotional work is equally well recognized.

### Amount Allowed Wholly Inadequate

(38) The amount of expenses as above classified and recognized by the Secretary and covered into the rates established would be

insufficient to pay traveling expenses actually incurred and would leave nothing for the support of the Exchange, for the sending out of market circulars and market information, for any form of advertising, for the operation of automobiles, or for the entertainment of patrons. It is earnestly and sincerely suggested that such a situation would not only mean the destruction of the business of this respondent but the elimination of the competitive livestock market at Kansas City and the discontinuance of the effective and essential public service which it has rendered or would in the future render to livestock producers in the territory tributary thereto.

V

(39) The failure of the Order to recognize as a part of the reasonable cost of operating the business of this respondent salaries actually paid to employed salesmen, and the appraised value of owner-salesman's services actually devoted to the business, is clearly without support in the evidence.

Wages of Employed Salesmen Already Noncompensatory

(40) As a result of the over-powering compulsion of greatly reduced gross revenues received by employing marketing agencies, including this respondent, the salaries of all employes, as set out in said report, were noncompensatory for the services rendered even in 1929 and during the period prior thereto. The rates and charges collected by the respondents neither during the world war nor during the period of recovery subsequent to 1921 followed the general increases in the cost of other services and commodities.
Hence salaries remained at relatively low levels. The re-
141 ductions subsequent to 1929 in gross revenues further reduced compensations paid. Increased drive-in business, multiplying consignments, and necessary operations in respect thereto required more work and additional personnel without corresponding increase in revenues.

Qualifications of Witnesses Testifying as to Value of Owner-Workers' Services Not Recognized

(41) The Order, in Paragraph 135, states that the witnesses who testified as to the actual value, in their opinion and judgment, of the owner-worker's services in connection with the rendition of stockyard services during the year 1931 possessed no peculiar qualifications authorizing their expression of expert opinion or judgment upon this subject, but the Order fails to state who these witnesses were and that each and all of them were men particularly qualified

by acquaintanceship with the practical conduct of the business, with the men whose services were being appraised, by personal business experience either upon the market as buyers of livestock or as bankers financing livestock transactions, or as producers of livestock sold upon the market to evaluate the services appraised. In discarding their testimony and fixing a flat amount of $4,000.00 per year as representative of the value of the services of these owner-salesmen, as well as of employed salesmen, the Order ignores not only all the testimony in the record showing that no two salesmen, either owners or employees, were alike in ability, capacity, or energy, but also knowledge common to all, that no two individuals are alike in ability in any given line of endeavor.

### Method Employed Unsound

(42) It is apparent that the standard compensation fixed by the order for salesmen is very little in recess of the average fixed by the appraisers as to owner-workers. This result does not establish the soundness of the method employed. Before the last hearing respondent requested the Secretary to join in the selection of witnesses competent to appraise owner-workers' services. The Secretary refused. The Order incorrectly and unfairly states that the witnesses who testified on this subject were not particularly qualified to express opinions and judgment on these values. This is manifestly in the light of the record an erroneous statement and constitutes an unfair reflection upon the qualifications, capacity, experience, and fairness of the witnesses, who were each and all of them men of outstanding ability, integrity, and possessed of experience and knowledge particularly qualifying them to give expert testimony upon this subject. The Order should frankly recognize these qualifications. In the so-called Omaha case to which the Order referred as justification for the method employed the respondents presented no evidence whatsoever of this character, and in fact as the Supreme Court of the United States said in its opinion, presented little or no evidence of any description.

### Personnel Required

(43) The conclusions reached in the order in respect to increase or decrease in the number of workers employed in rendering stockyard services furnished by respondents overlooks the findings of fact contained in the prior sections of the order (Paragraphs 25 to 28). These findings based on the evidence show the necessity for a very great increase in the number of men required to render efficiently these stockyard services on account of the great reductions per consignment and per sale, which,

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as the findings state, has given to respondent's business "the aspects of the retail handling of a commodity" instead of a wholesale handling, and has brought about increased cost per head of live stock handled.

### Salaries Reduced

(44) The Order states (paragraph 113) "The general impression gained from the record is, however, that respondents, in the face of almost universal lower levels in the United States, are attempting to maintain their personnel and the salaries thereof at the levels obtaining in the more prosperous year, 1929. This necessarily has a depressing effect upon the net moneys available to the owners of these businesses which may be designated 'net owner incomes'." It will be recalled during 1931 the then President of the United States made public appeals to employers in gerenal to maintatin wage scales. The statement as made in the Order is, however, incorrect. The cost study made by the government's chief accountant shows that the average wage of non-owner employes handling cattle and calves was $3,057.00 in 1929 and $2,809.00 in 1931. Employes engaged in handling hogs received an average wage of $2,644.00 in 1929 and only $2,122.00 in 1931. Employes engaged in handling sheep received an average wage of $3,513.00 in 1929 and only $3,029.00 in 1931. The comparative reductions in average owner compensation included in the Government audits as between the two years were greatly in excess of the reductions in respect to compensation of employes.

## VI

(45) The Order fails to recognize and include in the reasonable cost of the operation of the respondent's business a fair return upon the capital necessary and essential to such operation.

### Capital Invested

(46) The audits made by government accountants of the business of these respondents discloses net worth as of January 1, 1931, amounting to $1,010,145.11, and as of December 31, 1931, a net worth of $824,408.92; the general average of such net worth throughout the year amounting to the sum of $917,277.00. In addition the accountants recognize but fail to consider in assembling their costs, expenditures actually made for interest on exchange in collection by respondents amounting during the year to $18,796.51.

### Interest Return

(47) The Order held that a rate return of 6% on fixed capital and 7% on working capital was reasonable. In so

143 holding the Order is in conflict with the testimony of many witnesses, including experienced bankers and others to the effect that rates in excess of 8% per annum were reasonable and would be required to induce the investment of capital in the business of a market agency under the conditions existing in 1931 with respect to the business of this respondent.

### Amount Recognized Insufficient

(48) The Secretary allowed a return on invested capital of only $54,486.04 for the year 1931. This respondent and the other respondents in accordance with their respective use and employment of capital were lawfully entitled to a return of not less than $73,382.16 upon capital of their own used and useful in their respective businesses, and in addition the sum of $18,796.51 representing expenditure for the use of borrowed capital, or a total of $92,178.67. The Order therefore denies this respondent a fair return upon the capital employed by it, useful and necessary to the stockyard services rendered, and in so doing takes the property of this respondent without due process of law and in violation of the fifth amendment to the Constitution of the United States.

### Financial Responsibility Required

(49) The Order recites, in Paragraph 80 thereof, that this respondent and other respondents have filed with the Secretary what is denominated by the Order as a "Remittance Bond" to guarantee the faithful remittance of the proceeds of sales of livestock by respondents to the owners of such livestock, but fails to state that the form of bond given by this respondent and other respondents is not that of a mere fidelity or remittance bond, but is that of a contract bond, not only guaranteeing the faithful remittance of proceeds received for livestock sold, but guaranteeing prompt payment for all livestock purchased. The conclusion appears in said paragraph that the maintenance of said bonds aggregating in excess of $1,200,000.00 in penalty amount, necessitates but "a small amount of capital." In reaching such a conclusion upon the facts disclosed by this record, the Order violates all well-recognized and established principles of sound suretyship and underwriting and is not in accordance with fact, and denies to this respondent a fair return upon part of the capital necessarily employed in the conduct of its business. Such conclusion is directly at variance with an order of the Farm Credit Administration issued at Washington, D. C., on June 13, 1933, to the effect that livestock should only be consigned to market agencies of recognized "facilities, experience, and financial responsibility."

Going Concern Value Eliminated

(50) The Order fails to give cognizance to evidence in the record as to the cost of the establishment in the business of this respondent, as well as other respondents, of the routines, methods, and practices necessary to create a going business as a market agency, and fails to include as any part of the capital of this respondent upon which a return is allowed by said Order, any item or element reflecting such cost or representative in whole or in part of going concern value. The Order attempts to interpret the evidence submitted by petitioner as being representative of the cost of acquainting employees with the methods, practices, and routines essential and useful in the transaction of the business of this respondent, whereas the value so claimed by respondent as a part of its capital was, as the testimony shows, representative of the cost of establishing and coordinating in a going business these routines, methods, and practices essential to successful operation, and setting to their respective tasks personnel having individual knowledge thereof.

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VII

Rates to Dealers

(51) The rates and charges set out in said Order are not classified as between "dealers," as defined in said Act, and others for whom livestock is bought and sold. In so placing rates and charges to be paid by dealers on the same basis as rates and charges collected from others, the Order invades the power and right of management by this respondent of its own business and sets up rates and charges which would be, in fact, as shown by all the evidence in the record, uncollectible in the amounts so provided, create a duplication of commission charges with respect to the same livestock, and violate the long-established custom and practice of this respondent and of the other respondents in that rates and charges to "dealers" have been approximately 50% in amount of those charged others not registered as "dealers" under the Act. The Secretary, in determining that the rates and charges provided in said Order would yield a fair return to this petitioner, improperly and erroneously evaluated the return so to be received on the basis of the ability of this respondent to apply the same in the future conduct of its business. As shown by all the evidence in the record, this respondent will be unable to apply such Schedule of Rates to sales made on behalf of such "dealers," and will, in fact, fail to realize in respect to such sales the greater revenue therefrom anticipated by the Order of the Secretary. Therefore,

the gross return yield of the Schedule of Rates and Charges provided for in said Order will inevitably be less than the amount of such yield as contemplated by the Order, and fail to offer to or provide for this petitioner a fair return for the actual expenditure of time, effort, and money in the rendition of the stock yard services to which such rates and charges are applied.

## VIII

### Hazards Not Evaluated

(52) The Secretary failed to give recognition, as a necessary and reasonable operating cost to this petitioner, to certain of the hazards encountered in the transaction of petitioner's business as shown by all of the testimony, and such allowance as is made in said Order as representative of reasonable cost to this petitioner of uninsurable hazards is predicated solely on speculation and guess, and is not fairly representative of expenses normally incident to the existence of such hazards, such hazards originate from the liability of petitioner incident to loss of livestock in custody, damage done to others through escape of livestock in custody, loss incidental to failure of purchasers to pay for livestock purchased, loss uncovered by insurance incident to the guaranty of title by petitioner to the purchase covering livestock sold by petitioner, and loss, incidental expense, and errors entering into accounting processes, and loss incident to bank failures affecting the transmission of proceeds and collection of payment items. The allowance made in Paragraph 163 of said Order to cover uninsurable risks of the character above enumerated was $.0035 per head for cattle and calves, $.0014 per head for hogs, and $.0004 per head for sheep, and is wholly and entirely inadequate to cover such insurable risks and is not based upon evidence in the record, but solely upon a conclusion arbitrarily arrived at without fair consideration of such evidence.

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## IX

### Allowance for Profit

(53) The statement contained in Paragraph 159 of said Order, to the effect that reasonable rates should provide also a per head profit, that is, compensation for management and the carrying of uninsurable risk, is based upon an erroneous conception of law in that fair compensation for management and expenses incident to carrying uninsurable risks does not constitute profit but is expense. The Order, in purporting to allow in the ascertainment

of reasonable per head cost for reasonable profits or margin of profit in respect to selling or buying each species of livestock, and yet failing so to do, is inconsistent, and erroneous.

X.

Management Expense Understated

(54) The allowance set up in order to ascertain reasonable costs per head in Paragraphs 159 to 163, inclusive, of said Order, to cover compensation for management, is erroneously and improperly arrived at in that the bases stated therefor in Paragraph 159 is the ascertained cost of management of the two cooperative respondent market agencies. Such costs are not comparable under the evidence with the necessary cost incident to the management of respondent's business by reason of the fact that the amounts so stated relate to conditions and expenses of management dissimilar and noncomparable with those sustained by this petitioner. The evidence shows that such cooperative associations are managed by their several Boards of Directors, no allowance for whose time and expenditures is included in the amounts set out, and receive assistance from public employees in connection with matters affecting management, including employees of the Department of Agriculture, both in and out of Washington, D. C., county agents and others the expense of which is not included in the amounts stated.

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XI

Buying Rates

(55). The Schedule of Rates and Charges approved by the Order contains the statement that the rates for buying livestock of the various species should not be in excess of those for selling like species. The effect of this provision of the Tariff on revenue is not ascertained by the Order. As a matter of fact the application of the selling schedules contained in the order to buying operations would increase buying rates by approximately 33⅓% over the rates now in effect under the schedule filed by this respondent.

Increases Unjustified

(56) The Order devotes four short paragraphs on Page 80 to a discussion of buying costs. These paragraphs contain statements manifestly incorrect and unsound. The statement is made that the costs for buying are the same in amount as shown for selling except as to the items for salesmanship and for interest.

(Paragraph 165.) It is common knowledge and undisputed that the buying operation does not involve the physical control of livestock to the same extent as does the selling operation. The relatively greater difficulty of the selling is evidenced by the fact that many buyers, including farmers, employ no agency to represent them. This is seldom the case in selling livestock. The selling agent must grade and sort the livestock and care for it from the time it is unloaded from car or truck until it passes over the scales. He must supervise it while en route to market. Livestock bought is delivered to the buyer at the scales and the employes of the stockyards company place the livestock in the pens of the buyer or see to the loading out under his supervision. In selling this work is done by the commission firms. It is axiomatic that to sell is more difficult than to buy—when you have the purchase price. The Order states in Paragraph 166 that a competent buyer can buy as many animals of a species as an equally competent salesman can sell. While there is no direct testimony upon this point in the record the statement made is unsound only in understating the proposition. A competent buyer can undoubtedly buy accurately and efficiently with much greater rapidity than a salesman can sell. The buying costs as reflected by the cost study of respondent's account in respect to cattle and calves were $.4259 per head; in respect to hogs, $.0955 per head; and in respect to sheep $.0401 per head. This cost as to cattle is approximately two-thirds the selling cost; as to hogs approximately one-fourth of the selling cost; and as to sheep approximately 45% of the selling cost. It is true that capital requirements in buying are greater, and that losses from refused purchases sometimes occur, but these items constitute a small part of total costs either in selling or buying. The Order ignores this cost differential. It makes no reference to the testimony of many witnesses to the effect that it was the well established policy of the market to employ every possible means of securing the competition of additional buyers at the market in the interest of those who consign their livestock to the market for sale.

147 Increases in Buying Rates not Realizable Without Injury to Market

(57) The increased buying rates allowed by the Order are merely "paper" rates so far as yielding additional revenue to this respondent is concerned. The record shows that over a long period of time the current buying rates have been in effect and have borne a well established relationship to selling rates.

### Chicago Buying Rates Lower

(58) It appears that although selling rates are much lower at Kansas City, buying charges are already higher at Kansas City than at Chicago. The rates provided for in this Order, if applied, would create the anomalous condition of selling rates approximately 40% less than those in effect at Chicago, and buying rates approximately 40% higher than those at Chicago. Such a rate adjustment overturning a relationship between selling and buying rates that has existed not only at Kansas City but upon other markets for many years, would tend to obstruct the flow of livestock through the Kansas City Stock Yards which the Act seeks to protect and increase, and would be discriminatory and prejudicial.

### Antagonistic to Sellers' Interests

(59) The principle of rate-making embodied in this section of the Order, unjustified as it is from the standpoint of relative costs, impossible of effective application on account of competitive conditions, proceeds in defiance of sound and well-settled marketing policies and in direct antagonism to the true interests of producers of livestock.

## XII

### Unit Cost Integrations Contained in Order Are Inaccurate and Inconsistent With Sound Cost-Finding Principles

(60) The Order, in fixing the alleged reasonable costs per head for selling and buying, not only ignored and refused to give weight or effect to the costs found and testified to by the respondent's accountant, but also ignored and refused to give weight or effect to the unit costs found to exist by the government's chief accountant. That is evident from the comparative unit-costs shown in the table below:

| Species | Gov't chief accountant | Respondent's accountant | Fixed in the order |
|---|---|---|---|
| | *Cents* | *Cents* | *Cents* |
| Cattle and calves, per head | 56.71 | 61.64 | 44.70 |
| Hogs, per head | 25.10 | 33.87 | 18.10 |
| Sheep, per head | 08.02 | 08.83 | 05.80 |

148 (61) The differences in the findings of the respective accountants is largely attributable to the difference in treatment and allowance for compensation of owner-workers' services, and may be wholly reconciled and explained. The unit costs fixed in the Order, however, have no traceable connection

with the findings of the accountants which were so laboriously and expensively arrived at, and rest solely on speculation and guesswork and imported considerations which are altogether apart and foreign to the record in this case. The findings of the accountants reflect the history of the actual experience of the firms insofar as it is recorded, as determined by audits made by government forces. With respect to the sacrifice value of the personal services rendered by the owner-workers the facts are not of record. The government accountant used in lieu thereof the drawing accounts, the profit-takings, or some other indication (and in cases allowed nothing at all) to represent such owner's compensation, while the respondent's accountant used the independent witnesses' appraisement of the fair worth of their services. The Order, however, gives no effect to and disregards the evidence of record in this and other particulars and sets up function unit-costs, allegedly reasonable, but which in no instance have a counterpart in the actual experience of any of the 61 firms operating on the Kansas City market. These theoretical and imaginary unit-costs fixed by the Order, when applied to the 1931 valume of all firms save the two co-operatives, produce an aggregate suppositious handling cost, including return on investment, etc., which is $856,737, or 44.4% less than the aggregate costs and charges found by the respondent's accountant, and $633,132, or 37.11% less than the aggregate expenses found by the government's chief accountant, whose figures include nothing for return on invested capital or for profit allowance. These markedly unusual and unwarranted differences reflected by the service costs and charges conceived and set forth in the order are clearly traceable to violences done to the well established and universally accepted principles of cost-finding, and to the recognition of considerations wholly foreign to the record. By denying the true incidence of the cost of owner and employee workers' time devoted to yarding service, deleting the same from the unit-costs fixed for that function on the ground that it is covered by the allowance for selling-buying service, the truly reasonable costs of the yarding function have been grossly understated. When fixing the unit allowance for the selling-buying function, the actual expenses have been ignored entirely, an arbitrary limit being observed in fixing the unit-cost of that function. By this process the Order fails to make adequate allowance anywhere for the actual costs of yarding performed by workers whose expense was joint as between selling-buying and yarding functions. An hypothetical treatment of so-called business getting and maintenance expense, and a wholly mistaken conception of its true character and legitimacy, has resulted in an arbi-

trary allowance expressed in a unit cost which is based solely on opinion and in complete disregard of the facts of record.

(62) Species costs, as found by the accountants, segregate themselves with a fair degree of accuracy. The functional costs within the species costs, however, do not segregate themselves in actual operations, the same personnel and the same facilities being used very largely to perform all the functions. Species functional costs are therefore difficult to arrive at and impossible of reasonably accurate determination. They can be found only with the aid of arbitrary bases of apportionment; the most appropriate of which may actually vary widely from the facts. Erroneous conclusions reached in this order are occasioned chiefly, perhaps, by the procedure of disintegrating the species costs and reintegrating the allowed head rate by combining modified species functional costs. Under this procedure hypothesis rests upon hypothesis, and conjecture is piled upon conjecture, to the end that the final result reached bears no resemblance whatever to the facts in the situation. The process employed serves to bring about an unintentional magnification of errors, no doubt substantial but of unknown degree, which are inherent in the original functional cost separations.

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(63) Another penalty is unintentionally inflicted upon those whose livelihood depends upon the fairness of the rates being fixed, as a result of the integrating process employed under the conditions referred to. After making arbitrary eliminations and reductions in the costs as heretofore mentioned, the pared down functional costs are then considered separately, and neither the total species costs, nor the total operating costs are allowed to influence the integrated species unit costs stated in the Order. Notwithstanding, however, the market is a concrete whole, and each individual agency is obliged to handle all different kinds and sizes of consignments which may be offered, and to operate as an independent unit. For example, selling costs are found to be unusually low in the case of agencies which have relatively high unit costs for "business getting and maintenance". But when functional costs are considered separately, the connection between a low selling cost and a relatively high business getting cost is lost sight of, and cannot and has not received consideration. Neither the agencies handling average volume, nor any other agency, finds its functional costs within the range of the unit costs denominated as reasonable in the Order. Nor do the unit total costs of any one agency come within the limits of the unit total costs stated in the Order as reasonable.

(64) The disparities and discrepancies so conspicuously present in this instance are the common and almost inevitable results

of pursuing a method of fabricating so-called unit costs out of computations which relate, not to the actualities and the practical aspects of the situation, but to conjecture erected upon conjecture. The method pursued strains for refinements and nice exactions and differentiations which are impossible of attainment if the facts alone be dealt with.

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## XIII

### Confiscatory Effect of the Rates Prescribed

(65) The rates prescribed by the Order are confiscatory, discriminatory, prejudicial, and unlawful. The fact that they are confiscatory is plainly evidenced by the government's findings as to operating costs, which do not reflect all of the expense which respondent claims attaches to its operations.

(66) In the case of the eleven agencies referred to at page 39 of the Order as having handled more than fifty per cent of the total market volume in 1931, an application of the prescribed rates to the transactions actually handled by such agencies throughout the year discloses that the revenue yield of such rates would be only $7,920.37 more that the actual and admitted costs of providing the service exclusive of any allowance whatever for personal services rendered by the owners, exclusive of any return whatsoever upon the invested capital, exclusive of any allowances whatsoever for bad debts, for losses resulting from refused purchases, and for reserves to protect the uninsurable hazards to which the businesses are constantly subjected.

(67) In the case of cattle and calves, the rates would only return the bare operating expenses found by the government's chief accountant exclusive of the items aforementioned, plus $6,391.21. In the case of swine, the rates would yield $980.94 less than the bare operating expenses so found. In the case of sheep, the rates would yield only $2,510.10 more than the bare operating expenses so found. The net yield of $7,920.37 from all species over bare expenses would lack $20,640.28 of meeting the order's allowance for return on investment and would allow nothing whatsoever for compensating the owners for their personal services.

(68) The eleven agencies referred to are Agency Numbers 73, 51, 84, 82, 83, 36, 46, 10, 63, 59, and 54, being the eleven out of sixty-one agencies operating on the market which enjoyed the largest patronage. Collectively they handled 49.96% of all cattle and calves, 59.42% of the swine, and 56.44% of the sheep sold and bought as represented by the number of head, and 54.32% of the total number of equivalent carloads, the unit of measurement used

in the Order. Among the eleven are the two co-operative agencies, numbers 10 and 36.

(69) The eleven agencies to point are those of large volume, being of the class, according to the statement in the Order appearing on page 53, whose cost experience may not be taken as criteria for rate-making purposes lest injustice be done to other firms handling volume of lesser magnitude, and, therefore, at higher unit costs.

(70) In the case of these eleven agencies, the gross yield of the prescribed rates is less than one per cent more than the bare operating expenses found by the government's accountant, exclu-
151 sive of the items aforementioned. If we reckon the allowance deleted from the government expenses for owners' services, amounting to $147,162.80, and return on investment on the basis of the order's allowance, which aggregates $28,560.65 for the eleven agencies, the degree in which the rates are manifestly and undisputably confiscatory may be set at the sum of these two items less the $7,920.37 returned in excess of bare operating expenses, or $167,803.08 for the eleven firms. This sum is 17.3% of the government's own findings as to what the rates should cover.

(71) Taking the twenty-three agencies, inclusive of the eleven just referred to, which are cited in the Order at page 39 as having handled more than 75% of the market volume as measured by equivalent carloads, it likewise appears by applying the prescribed rates to the transactions actually handled throughout the year 1931 that such rates are confiscatory as applied to such firms individually and collectively. These particular twenty-three of the sixty-one agencies operating on the market are those which individually handle the largest volume and unquestionably operate with more than the average efficiency and economy of expenditures. Collectively such agencies handled 76.55% of all cattle and calves, 77.14% of all swine, 60.24% of all sheep, and 70.99% of all animals sold and bought on the market during 1931, as measured by the number of head, and 75.3% of the total volume of all species as measured by the equivalent carload.

(72) Again using the operating expenses found by the government's chief accountant as they appear of record, which are exclusive of any return whatever upon invested capital, and deleting therefrom the amounts included to represent compensation for owner's services rendered, the gross revenue produced by the prescribed rates would be only $25,025.38 more than the government's findings as to bare operating expenses of such twenty-three agencies. This $25,025.38 is only 60% of the allowed return on the investment of such firms, thus providing no compensation whatsoever for owner's services rendered. As shown by the government's own

evidence of record, the measure of confiscation as respects these twenty-three firms is indicated by the sum of the allowances for owner's services, as shown by its chief accountant, and the return on investment allowed in the order, less the $25,025.38 which the rate yield would contribute thereto, or $269,565.02. This deficiency is 18.7% of the total operating expenses found by the government's chief accountant plus the allowance for return on investment provided by the Order, as respects the twenty-three agencies.

(73) Considering the fifty-nine firms operating on the market, exclusive of the two co-operative agencies, the yield of the prescribed rates over bare operating expenses, exclusive of any compensation whatsoever to owners for services rendered, and exclusive of any return whatsoever on capital invested, would be $115,253.87. For such firms the allowance for return on investment provided in the Order would be $49,073.64. Deducting that amount from the $115,253.87 referred to would leave $66,180.23 to compensate the owners for their services, which would average $486.62 per owner per annum.

152 (74) Considering the two cooperative agencies and reckoning the yield of the prescribed rates on the basis of the average yield per head for each species, as developed by applying the prescribed rates to the actual transactions of the fifty-nine firms for the entire year 1931, the showing for the market as a whole is further impoverished. On that basis, the rates would produce $78,125.09 over the government's findings as to bare operating expenses. After providing for return on investment as allowed in the order, in the aggregate sum of $54,394.81, the remainder of the rate yield available for the compensation of owner-workers would be only $23,730.28, an average of $174.50 per owner-worker per annum, or the equivalent of 48 cents per man per day.

(75) Based upon the government's own findings as to the actual and admitted expense and cost of operations, exclusive of any allowance whatsoever for owners' services and exclusive of any return whatsoever on capital invested and used in the conduct of the business, the prescribed rates are confiscatory, discriminatory, prejudicial, and unlawful as they would apply to this respondent. This is proven to be so by applying such rates to each and all of the transactions actually handled by this respondent during the year 1931. The net sum, if any, which would remain after defraying the bare operating expenses for that year (as disclosed by the government's audits and set forth in the exhibits of record introduced by its chief accountant) to provide the Order's allowance for return on invested capital and to compensate the owner-workers for their personal services rendered, is shown on the underscored line of the table next follow-

ing, together with the amount of the Order's allowance for return on invested capital, the residue thereafter available for the compensation of the owner(s), and the average compensation per owner, if any, per annum which such amount represents. The amount (if any) so appearing as compensation available to the owner(s) is in fact exaggerated, because the actual expense and cost of conducting the business of the respondent in 1931 was materially in excess of the findings of the government's accountant, as shown by the testimony and exhibits of the respondent's own accountant witness. The government's own findings as to operating expenses and the cost worth of owner-worker's services is used here without prejudice and without any abatement of respondent's contention as to their inadequacy and unfairness, because their use removes all occasion for dispute concerning the amount of deductions from the gross yield of the prescribed rates and resolves all contentions with respect thereto to the disadvantage of the respondent.

153 Revenue Product of Prescribed Rates Which Would Be Available for Compensation of Owners for Services rendered, and for Return on Capital Invested

[Deficits appear in italics]

| Agency No. | Revenue from rates available to compensate owner for services and return on investment | Less return on investment as allowed in the order | Remainder, if any, available to compensate owner for services rendered | Average compensation available per owner per annum |
|---|---|---|---|---|
| 1 | $716.02 | $173.10 | $542.92 | $542.92 |
| 4 | *3,387.20* | 610.89 | None | None |
| 5 | 1,193.12 | 836.33 | 356.79 | 356.79 |
| 6 | *3,285.62* | 299.68 | 2,985.94 | 1,492.97 |
| 7 | 4,331.33 | 529.66 | 3,801.67 | 1,900.84 |
| 9 | *285.79* | 182.45 | None | None |
| 11 | *1,468.74* | 42.80 | None | None |
| 12 | *11,140.85* | 1,220.86 | None | None |
| 13 | 1,352.72 | 1,267.60 | 85.12 | 28.37 |
| 14 | 684.70 | 855.57 | None | None |
| 15 | 4,451.21 | 385.36 | 4,065.85 | 2,032.93 |
| 16 | 4,989.58 | 465.87 | 4,523.71 | 1,507.90 |
| 17 | 3,380.76 | 221.16 | 3,159.60 | 1,579.80 |
| 18 | 9,945.46 | 980.81 | 8,964.65 | 2,241.16 |
| 19 | *1,899.23* | 223.04 | None | None |
| 20 | *1,810.98* | 514.38 | None | None |
| 23 | 1,044.34 | 538.33 | 506.01 | 506.01 |
| 25 | *1,658.55* | 948.79 | None | None |
| 26 | 870.79 | 807.99 | 271.80 | 135.90 |
| 29 | 557.74 | 474.98 | 82.76 | 27.59 |
| 30 | 2,859.25 | 378.09 | 2,481.16 | 1,240.58 |
| 33 | 441.11 | 37.23 | 403.88 | 403.88 |
| 34 | 2,462.63 | 898.31 | 1,564.32 | 1,564.32 |
| 36 | 45.64 | 1,185.13 | None | None |
| 37 | 435.86 | 33.36 | 402.50 | 402.50 |
| 42 | 7,406.58 | 1,098.39 | 6,308.19 | 2,102.73 |
| 43 | 3,422.31 | 561.92 | 2,860.39 | 2,860.39 |
| 44 | 9,564.55 | 1,069.56 | 8,495.29 | 4,247.65 |
| 45 | 8,247.90 | 2,626.98 | 5,620.92 | 1,124.18 |
| 46 | 6,874.05 | 678.76 | 6,195.29 | 2,065.10 |
| 51 | 12,575.20 | 1,479.48 | 11,095.72 | 11,095.72 |
| 52 | *19.05* | 386.12 | None | None |
| 53 | 2,681.73 | 517.65 | 2,164.08 | 1,082.04 |
| 54 | *9,259.54* | 5,308.63 | None | None |
| 55 | 5,525.08 | 1,080.02 | 4,445.06 | 2,222.53 |

[Deficits appear in italics]

| Agency No. | Revenue from rates available to compensate owner for services and return on investment | Less return on investment as allowed in the order | Remainder, if any, available to compensate owner for services rendered | Average compensation available per owner per annum |
|---|---|---|---|---|
| 58 | $5,709.37 | $587.91 | $5,161.46 | $2,570.73 |
| 59 | 1,111.55 | 3,788.54 | None | None |
| 60 | 4,184.36 | 439.23 | 3,745.13 | 624.19 |
| 61 | 615.45 | 232.67 | 382.78 | 382.78 |
| 62 | *685.33* | 506.01 | None | None |
| 63 | 2,419.08 | 3,150.28 | None | None |
| 65 | *1,492.55* | 666.62 | None | None |
| 66 | 1,031.31 | 61.13 | 970.18 | 970.18 |
| 67 | 1,328.11 | 51.23 | 1,276.88 | 1,276.88 |
| 70 | *1,604.23* | 689.94 | None | None |
| 71 | *2,696.37* | 1,078.49 | None | None |
| 72 | 268.60 | 43.68 | 225.01 | 225.01 |
| 73 | *4,789.11* | 1,432.30 | None | None |
| 74 | *238.18* | 149.13 | None | None |
| 75 | *680.24* | 422.59 | None | None |
| 76 | 1,654.37 | 210.90 | 1,443.47 | 1,443.47 |
| 77 | 3,736.97 | 429.22 | 3,307.75 | 1,102.58 |
| 78 | 770.78 | 209.19 | None | None |
| 79 | 915.22 | 200.27 | 714.95 | 714.95 |
| 82 | 1,976.80 | 1,875.71 | 101.09 | 20.22 |
| 83 | 22,273.40 | 1,869.68 | 20,403.72 | 4,080.74 |
| 84 | 4,843.81 | 1,698.36 | 2,844.93 | 948.31 |
| 87 | 2,054.46 | 405.56 | 1,648.90 | 1,648.90 |

154 XIV

The failure to grant the request of this respondent for a separate hearing upon the issues presented by the Order of Inquiry; the refusal of the request made to the Examiner that a tentative report on the evidence be prepared by the Examiner and that oral argument before the Secretary of Agriculture be had upon the evidence and the conclusions expressed in such report and the delegation to others of powers and authorities involving the exercise of discretion solely vested in the Secretary of Agriculture under the law, have served to deny to this respondent the full hearing to which respondent is entitled, provided for in the Packers and Stockyards Act, 1921, and as required under such circumstances by the laws and Constitution of the United States of America.

Wherefore, this respondent respectfully prays that an order be entered herein withdrawing and for naught holding said Order purporting to be made by the Secretary of Agriculture as of June 14, 1933, and reopening the above entitled proceeding by reinvestigation of the matters and things in the Notice and Order of Inquiry referred to, and that this proceeding be set down for further hearing in order that a proper determination may be had after full, fair, and adequate hearings and upon the evidence of the matters and things in said Notice and Order of Inquiry brought in issue.

DAVE HAMER LIVESTOCK COMMISSION COMPANY.
By JOHN B. GAG, *Attorney.*

294006—41——10

*Exhibit C to petition*

## Comparison of So-Called "Reasonable" Unit-Costs per Order of June 14, 1933, and Total Costs as Found by Government Accountants and as Claimed by Respondents (59 Firms) for the Test Year 1931

| | Selling and buying, number of head, 59 firms | Allowances per order June 1933 | | Total costs as claimed | | Order's allowances in recess (excess shown*) | | Difference between Government and respondent's costs (Government recess*) |
|---|---|---|---|---|---|---|---|---|
| | | Rate per head | Amount | By Government Bachmann exhibits | Respondents | Of Government's costs | Of respondent's costs | |
| Cattle and calves: | | | | | | | | |
| Salesmanship and buying | 2,284,207 | $0.1379 | $314,992.15 | $351,248.83 | $410,161.43 | $36,256.68 | $95,169.28 | $58,912.60 |
| Yarding salaries | | .0750 | 171,315.53 | 221,737.54 | 236,083.76 | 50,422.01 | 64,768.23 | 14,346.22 |
| Yarding expenses | | .0140 | 31,978.90 | 29,269.39 | 29,349.00 | *2,709.51 | *2,629.90 | 79.61 |
| Office salaries | | .0525 | 119,920.87 | 136,767.01 | 126,232.46 | 16,846.14 | 6,311.59 | *10,534.55 |
| Office expenses | | .0300 | 68,526.61 | 71,533.10 | 74,004.24 | 3,006.49 | 5,478.03 | 2,471.54 |
| Business getting and maintenance | | .0450 | 102,789.32 | 326,303.91 | 296,248.94 | 223,514.59 | 193,459.62 | *30,054.97 |
| Administration and general expenses | | .0330 | 75,378.83 | 75,366.43 | 81,373.82 | *12.40 | 5,994.99 | 6,007.39 |
| Insurance (risk expense) | | .0070 | 15,989.45 | 30,433.98 | 24,010.06 | 14,444.53 | 8,020.61 | *6,423.92 |
| Return on investment | | .0149 | 34,263.11 | 26,730.01 | 44,452.54 | *7,533.10 | 10,189.43 | 17,722.53 |
| Total costs | | .4094 | 935,154.77 | 1,269,390.20 | 1,321,916.25 | 334,235.43 | 386,761.88 | 52,526.05 |
| Profit— | | | | | | | | |
| Management | | .0350 | 79,947.25 | 54,082.62 | 86,160.47 | *25,864.63 | 6,213.22 | 32,077.85 |
| Uninsurable risks | | .0035 | 7,994.72 | | | *7,994.72 | *7,994.72 | |
| Total cost+profit | | .4479 | 1,023,096.74 | 1,323,472.82 | 1,408,076.72 | 300,376.08 | 384,980.38 | 84,603.90 |
| Hogs: | | | | | | | | |
| Salesmanship and buying | 1,045,048 | .0353 | 36,890.19 | 56,621.73 | 63,547.69 | 19,731.54 | 26,657.50 | 6,925.96 |
| Yarding salaries | | .0300 | 31,351.44 | 62,975.60 | 65,297.42 | 31,624.16 | 33,945.98 | 2,321.82 |
| Yarding expenses | | .0060 | 6,270.29 | 2,274.92 | 2,247.49 | *3,995.37 | *4,022.80 | *27.43 |
| Office salaries | | .0300 | 31,351.44 | 36,958.26 | 41,332.72 | 5,606.82 | 9,981.28 | 4,374.46 |
| Office expenses | | .0175 | 18,288.34 | 19,426.59 | 26,110.38 | 1,138.25 | 7,822.04 | 6,683.79 |
| Business getting and maintenance | | .0180 | 18,810.66 | 52,043.54 | 101,008.13 | 33,232.68 | 82,197.27 | 48,964.59 |
| Administration and general expenses | | .0200 | 20,900.96 | 18,800.21 | 19,240.86 | *2,100.75 | *1,660.10 | 440.65 |
| Insurance (risk expense) | | .0025 | 2,612.62 | 5,508.06 | 4,971.47 | 2,895.44 | 2,358.85 | *536.59 |
| Return on investment | | .0070 | 7,315.34 | 5,707.31 | 10,444.59 | *1,608.03 | 3,129.25 | 4,737.28 |
| Total costs | | .1665 | 173,791.48 | 260,316.22 | 334,200.75 | 86,524.74 | 160,409.27 | 73,884.53 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Profit— | | | | | | | | |
| Management | | .0133 | 13,899.14 | 9,121.51 | 19,777.10 | *4,777.63 | 5,877.96 | 10,655.59 |
| Uninsurable risks | | .0014 | 1,463.07 | | | *1,463.07 | *1,463.07 | |
| Total costs+profit | | .1810 | 189,153.69 | 269,437.73 | 353,977.85 | 80,284.04 | 164,824.16 | 84,540.12 |
| Sheep: | | | | | | | | |
| Salesmanship and buying | 1,896,608 | .0140 | 26,552.51 | 26,199.42 | 33,323.47 | *353.09 | 6,770.96 | 7,124.05 |
| Yarding salaries | | .0080 | 15,172.86 | 14,765.66 | 15,471.40 | *407.20 | 298.54 | 705.74 |
| Yarding expenses | | .0004 | 758.64 | 8,726.11 | 8,673.93 | 7,967.47 | 7,915.29 | *52.18 |
| Office salaries | | .0100 | 18,966.08 | 16,601.47 | 19,715.03 | *2,364.61 | 748.95 | 3,113.56 |
| Office expenses | | .0050 | 9,483.04 | 8,850.50 | 9,856.62 | *632.54 | 373.58 | 1,006.12 |
| Business getting and maintenance | | .0059 | 11,189.99 | 49,522.74 | 53,885.19 | 38,332.75 | 42,695.20 | 4,362.45 |
| Administration and general expenses | | .0050 | 9,483.04 | 9,125.72 | 8,512.70 | *357.32 | *970.34 | *613.02 |
| Insurance (risk expense) | | .0013 | 2,465.59 | 5,044.25 | 3,331.73 | 2,578.66 | 866.14 | *1,712.52 |
| Return on investment | | .0040 | 7,586.43 | 5,918.27 | 4,822.08 | *1,668.16 | *2,764.35 | *1,096.19 |
| Total costs | | .0536 | 101,658.18 | 144,754.14 | 157,592.15 | 43,095.96 | 55,933.97 | 12,838.01 |
| Profit— | | | | | | | | |
| Management | | .0040 | 7,586.43 | 6,660.94 | 9,928.78 | *925.49 | *2,342.35 | 3,267.84 |
| Uninsurable risks | | .0004 | 758.64 | | | *758.64 | *758.64 | |
| Total costs+profit | | .0580 | 110,003.25 | 151,415.08 | 167,520.93 | 41,411.83 | 57,517.68 | 16,105.85 |
| All species: | | | | | | | | |
| Salesmanship and buying | | | 378,434.85 | 434,069.98 | 507,032.59 | 55,635.13 | 128,597.74 | 72,962.61 |
| Yarding salaries | | | 217,839.83 | 299,478.80 | 316,852.58 | 81,638.97 | 99,012.75 | 17,373.78 |
| Yarding expenses | | | 39,007.83 | 40,270.42 | 40,270.42 | 1,262.59 | 1,262.59 | |
| Office salaries | | | 170,238.39 | 190,326.74 | 187,280.21 | 20,088.35 | 17,041.82 | *3,046.53 |
| Office expenses | | | 96,297.99 | 99,810.19 | 109,971.24 | 3,512.20 | 13,673.25 | 10,161.05 |
| Business getting and maintenance | | | 132,790.17 | 427,870.19 | 451,142.26 | 295,080.02 | 318,352.09 | 23,272.07 |
| Administration and general expenses | | | 105,762.83 | 103,292.36 | 109,127.38 | *2,470.47 | 3,364.55 | 5,835.02 |
| Insurance (risk expense) | | | 21,067.66 | 40,986.29 | 32,313.26 | 19,918.63 | 11,245.60 | *8,673.03 |
| Return on investment | | | 49,164.88 | 38,355.59 | 59,719.21 | *10,809.29 | 10,554.33 | 21,363.62 |
| Total costs | | | 1,210,604.43 | 1,674,460.56 | 1,813,709.15 | 463,856.13 | 603,104.72 | 139,248.59 |
| Profit— | | | | | | | | |
| Management | | | 101,432.32 | 69,865.07 | 115,866.35 | *31,567.75 | 14,433.53 | 46,001.28 |
| Uninsurable risks | | | 10,216.43 | | | *10,216.43 | *10,216.43 | |
| Total costs+profit | | | 1,322,253.68 | 1,744,325.63 | 1,929,575.50 | 422,071.95 | 607,321.82 | 185,249.87 |

*Statement as to petitions filed*

The petitions filed in the several remaining cases being Docket Nos. in Equity Nos. 2329–2378, Inc., are identical with the petition above set out and filed in Case No. 2328, except in respect to the name of the individual plaintiff (or plaintiffs) and the amounts in dollars or percentages appearing in Section VIII of each of the petitions applicable under the allegations to the particular plaintiff in the specific suit. The name or names of the plaintiff (or plaintiffs), the number of the suit, and the specific amounts set forth in the order of their appearance in Section VIII of each petition are for the purpose of brevity condensed and set forth in the following table:

| Docket No. | Name of plaintiff | Amount appearing in first paragraph of subsection (a) of section VIII | Amounts appearing seriatim in second paragraph of subsection (a) of section VIII | | | | | | Amounts appearing seriatim in second paragraph of subsection (b) of section VIII |
|---|---|---|---|---|---|---|---|---|---|
| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 2329 | J. M. Ragland, W. B. Storts and W. L. Burrus, partners d/b as Ragland, Storts & Burrus L. S. Com. Co. | $12,587.72 | *Percent* 8 | *Percent* 13 | *Percent* 15.50 | *Percent* 6.53 | *Percent* 13.59 | | $6,300.00 |
| 2330 | H. H. Klecker, d/b as Hinle Klecker Sheep Com. Co. | 5,058.70 | 19 | 76 | | | 13.91 | $356.79 | 6,000.00 |
| 2331 | R. E. Lewis and S. H. Flournoy, Partners d/b as Lewis-Flournoy Livestock Com. Co. | 6,824.37 | 17 | 11 | 12.98 | 2.56 | 12.04 | 1,492.97 | 7,000.00 |
| 2332 | Grover C. Maxwell and Ben J. Furnish, Partners d/b as Maxwell-Furnish Livestock Com. Co. | 4,628.73 | — | — | [1] 11.30 | .32 | 6.14 | 1,900.84 | 8,000.00 |
| 2333 | John M. Nichols, d/b as John M. Nichols L. S. Com. Co. | 6,119.05 | — | — | 11.75 | 1.82 | 5.96 | None | 4,000.00 |
| 2334 | Bowles Livestock Com. Co., a Corporation | 16,820.69 | 11 | 18 | 17.78 | 1.95 | 8.81 | None | |
| 2335 | Crider Brothers Com. Co., a Corporation | 14,340.07 | 6 | 14 | 14.02 | 2.46 | 9.42 | 28.37 | 12,400.00 |
| 2336 | Chas. Dixon Commission Co., a Corporation | 14,311.67 | [1] 2 | 26 | 19.05 | .54 | 7.58 | None | 10,800.00 |
| 2337 | E. W. Elliott & R. K. Swain, Partners d/b as Elliott Swain & Company | 4,443.84 | 16 | 1 | 13.48 | .70 | 8.65 | 2,032.93 | 7,200.00 |
| 2338 | Farrar, Davis & Campbell Livestock Com. Co., a Corpn | 7,316.99 | 22 | 8 | 14.52 | .16 | 6.30 | 1,507.90 | 10,900.00 |
| 2339 | W. G. Gladish, d/b as Gladish Livestock Com. Co. | 4,904.47 | 13 | 9 | [1] 12.57 | .90 | 11.02 | 1,579.80 | 7,000.00 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 2340 | O. C. Haggart, John H. Wilson, and Glenn Haggart, Partners d/b a-Haggart-Wilson L. S. Com. Co | 11,339.06 | 3 | 8 | 13.19 | 5.89 | 5.48 | 2,241.16 | 15,150.00 |
| 2341 | Wm. M. Liggett, d/b as K. C. Livestock Com. Co | 10,403.29 | 6 | 10 | 15.09 | 3.93 | 6.97 | None | 6,000.00 |
| 2342 | Fern O. Sanders, d/b as Fern O. Sanders L. S. Com. Co | 9,494.05 | 17 | 53 | 11.16 | 1.15 | 9.25 | 506.01 | 6,000.00 |
| 2343 | Stuart-Robinson-Hoover Company, a Corpn | 26,583.86 | 16 | 24 | 14.99 | 2.20 | 12.91 | 1,365.63 | 22,300.00 |
| 2344 | R. W. Wester & Joseph P. Smith, Partners, d/b as Wester Brothers & Smith Commission Company | 7,408.63 | 120 | 9 | 14.97 | .54 | 8.67 | 135.90 | 8,100.00 |
| 2345 | Stagner, Pieronnet & Willis L. S. Com. Co., a Corpn | 9,535.55 | 1 | 6 | 13.47 | 1.16 | 9.49 | 27.59 | 10,400.00 |
| 2346 | Geo. S. Tamblyn, d/b as Tamblyn Com. Co | 5,950.72 | — | — | 14.49 | .55 | 6.66 | 1,240.58 | 8,500.00 |
| 2347 | Henry F. Carnes, d/b as H. F. Carnes L. S. Com. Co | 1,570.66 | 24 | 119 | 15.89 | 2.96 | 2.34 | 403.88 | 1,500.00 |
| 2348 | Warren Cummings, d/b as Warren Cummings L. S. Com. Co | 12,082.91 | 6 | 16 | 11.71 | 5.94 | 8.44 | 1,564.32 | 6,000.00 |
| 2349 | Drumm- Standish Com. Co., a Corpn | 27,682.12 | 152 | 28 | 15.04 | 1.22 | 10.56 | None | 29,500.00 |
| 2350 | Link Fasken, d/b as Link Fasken L. S. Com. Co | 480.03 | — | — | 11.66 | — | 5.26 | 402.50 | 750.00 |
| 2351 | H. E. Long, Robt. B. Perry, and B. W. Perry, Partners d/b as Long-Perry Livestock Com. Co | 11,043.17 | 6 | 14 | 18.07 | 2.23 | 7.59 | 2,102.73 | 14,000.00 |
| 2352 | L. E. Tice, d/b as Knight & Tice Sheep Com. Co | 3,947.78 | 14 | 31 | — | — | 11.06 | 2,860.39 | 5,000.00 |
| 2353 | Chas. F. Vieregg & Robt. H. Stover, Partners, d/b as W. M. Leitch Sheep Com. Co | 2,162.76 | 13 | 11 | — | — | 10.48 | 4,247.65 | 10,000.00 |
| 2354 | National Livestock Com. Co., a Corpn | 51,951.86 | 18 | 17 | 13.36 | 3.39 | 10.96 | 1,124.18 | 36,000.00 |
| 2355 | Bryant Poole, D. L. Dempsey & James Rutherford, Partners doing business as Poole-Dempsey-Rutherford L. S. Com. Co | 8,623.74 | 6 | 22 | 13.62 | 3.93 | 6.38 | 2,065.10 | 12,500.00 |
| 2356 | Harry Kennaley, d/b as Harry Kennaley Com. Co | 5,044.28 | 12 | 23 | 11.38 | .95 | 8.64 | | 10,000.00 |
| 2357 | Ehrke-Martin L. S. Com. Co., a Corporation | 7,580.08 | 15 | 23 | 10.92 | 3.97 | 6.19 | 10,820.04 | 8,200.00 |
| 2358 | John Clay, F. H. Connor, Alan F. Wilson & Chas. G. Smith, Partners d/b as John Clay & Company | 53,222.32 | 18 | 8 | 16.36 | 4.31 | 13.33 | None | 10,000.00 |
| 2359 | Ralph W. Wright & Wm. N. Baucus, Partners, d/b as Wright & Baucus Livestock Com. Co | 23,480.77 | 5 | 14 | 12.93 | 4.42 | 2.20 | 2,222.53 | 13,500.00 |
| 2360 | Swift & Henry Livestock Com. Co., a Corpn | 51,577.18 | 14 | 14 | 13.93 | 2.91 | 12.98 | None | 41,800.00 |
| 2361 | L. Knop, Henry F. Theis, F. W. Theis, and A. C. Theis, Partners d/b as H. Theis & Sons | 14,024.77 | 8 | 17 | 13.96 | .06 | 10.48 | 624.19 | 16,500.00 |
| 2362 | Ham Knighton, d/b as Ham Knighton L. S. Com. Co | 3,188.17 | 19 | 111 | 10.11 | .82 | 5.38 | 382.78 | 3,200.00 |
| 2363 | J. M. Laird and G. T. Laird, Partners d/b as Laird Brothers Livestock Com. Co | 11,214.34 | 150 | 13 | 114.52 | .57 | 7.67 | None | 9,000.00 |
| 2364 | Martin, Blomquist & Lee Com. Co., a Corpn | 65,826.05 | 21 | 7 | 15.33 | 6.33 | 9.07 | None | 42,200.00 |
| 2365 | H. M. Baker, W. C. Bradshaw, Barney Metz and Louise M. Moffett, Partners d/b as Moffett Livestock Com. Co | 13,544.95 | 13 | 16 | 13.24 | 7.80 | 11.61 | None | 11,000.00 |
| 2366 | Jay D. McCormick, d/b as Jay D. McCormick L. S. Com. Co | 1,965.08 | 17 | 15 | 112.76 | .82 | 9.26 | 970.18 | 2,000.00 |
| 2367 | W. C. Kile, d/b as Kile Com. Co | 10,862.15 | 20 | 7 | 13.25 | 4.11 | 10.75 | None | 6,000.00 |
| 2368 | Ryan-Robinson Com. Co., a Corpn | 24,414.25 | 0 | 9 | 14.04 | 5.28 | 9.50 | None | 18,050.00 |
| 2369 | Ben L. Welsh, d/b as Welsh Livestock Com. Co | 1,577.38 | 10 | — | 15.79 | 4 | 6.45 | 225.01 | 1,800.00 |
| 2370 | Witherspoon Livestock Com. Co., a Corpn | 2,756.36 | 14 | 19 | 16.63 | 11.41 | 9.62 | None | 19,283.80 |
| 2371 | W. E. Curtis, d/b as W. E. Curtis & Company | 8,909.64 | 29 | 14 | 15.07 | 1.56 | 9.84 | None | 6,000.00 |
| 2372 | Norman B. Greer, d/b as Greer & Company | 3,498.28 | 10 | 21 | 11.93 | 3.97 | 10.49 | 1,443.47 | 3,500.00 |
| 2373 | Inman-Hutton Livestock Com. Co., a Corpn | 9,023.35 | 38 | 33 | 14.33 | 5.21 | 7.62 | 1,192.56 | 11,000.00 |
| 2374 | Walter G. Land & John E. Maze, Partners, d/b as Walter G. Land Livestock Com. Co | 6,241.89 | 5 | 26 | 13.51 | 8.73 | 8.05 | None | 3,000.00 |

## In United States District Court—Continued

### *Statement as to petitions filed*

| Docket No. | Name of plaintiff | Amount appearing in first paragraph of subsection (a) of section VIII | Amounts appearing seriatim in second paragraph of subsection (a) of section VIII | | | | | | Amounts appearing seriatim in second paragraph of subsection (b) of section VIII |
|---|---|---|---|---|---|---|---|---|---|
| | | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| | | | *Percent* | *Percent* | *Percent* | *Percent* | *Percent* | | |
| 2375 | Less White, d/b as Less White Livestock Com. Co | $3,906.86 | [1] 12 | 3 | 13.11 | 3.12 | 9.58 | $714.95 | $4,000.00 |
| 2376 | Wilson Egan & Co., a Corporation | 28,725.01 | 10 | 23 | 16.14 | 4.36 | 6.28 | 20.22 | 20,000.00 |
| 2377 | Burlington Livestock Com. Co., a Corpn. | 45,631.05 | 51 | 25 | 15.50 | 3.65 | 7.33 | 4,080.74 | 24,083.56 |
| 2378 | Cassidy Southwestern Com. Co., a Corpn | 20,579.93 | — | — | 13.81 | 2.39 | 11.46 | 948.31 | 16,000.00 |

LEGEND

(1) The figures in this column are alleged in the petition to represent the amount by which the gross revenue which would have been received by petitioner in the year 1931 if the schedule of rates and charges prescribed by the order had been in force and effect would have been less than the total calculable costs incurred by petitioner in the rendition of stockyard services (Res. Exh. 207).

(2) Alleged to be the amount in percentage by which the gross yield to individual petitioner of charges actually collected in 1932 was less than the gross yield of charges collected in 1931.

(3) Alleged amount in percentage by which the gross revenue of petitioner was less for the first 5 months of 1933 than during the first 5 months of 1932.

(4) Alleged to represent in percentage the amount by which the schedule of rates and charges ordered by the Secretary if applied to the business of individual petitioner would reduce revenues in respect to cattle and calves.

(5) Alleged to be the amount in percentage by which the schedule of rates and charges ordered by the Secretary if applied to the business of petitioner would reduce revenues in respect to hogs.

(6) Alleged to be representative in percentage of amount by which the schedule of rates and charges ordered by the Secretary if applied to the business of the individual petitioner would reduce revenues in respect to sheep.

(7) Alleged to represent the total compensation for personal services rendered by the owners of petitioner agency if the rates and charges ordered by the Secretary had been in effect in 1931 and petitioner incurred costs exclusive of any compensation to owners for personal service, as found by Government's Chief Accountant in cost study introduced in evidence (Ex. 115).

(8) Alleged to be representative of the reasonable value of the personal services rendered by the owner or owners of petitioner agency as shown by evidence submitted on behalf of the appellants. The number of owners in respect to each agency is set out in the evidence and in the individual petitions and the amount given includes all owners actually employed in the rendition of the service in connection with the operations of the individual petitioner in the year 1931.

[1] Indicates gain instead of loss.

157 In United States District Court

In Equity—No. 2328

[Title omitted.]

*Temporary restraining order*

Filed July 22, 1933

Now on this 22nd day of July 1933, comes the petitioner as plaintiff herein, and presents to the undersigned Judges of this Court a verified petition wherein it is prayed that an order staying and suspending the enforcement, operation and execution of the Order of June 14, 1933, of the defendant Secretary of Agriculture issue against the defendants, and each of them, as in said petition prayed.

And the Court, being duly advised in the premises, finds that notice of application for such Restraining Order has been duly given to the defendants in accordance with law and that immediate and irreparable injury and damage will result to petitioner unless such Order shall issue according to the prayer of the Petition, and that petitioner is entitled to a temporary restraining or Stay Order as prayed, in this:

That petitioner has an established business as a market agency, registered under the Packers and Stockyards Act, 1921, engaged in the sale and purchase of livestock for others at the Kansas City Stock Yards, in Kansas City, Missouri, and that if such temporary restraining and stay order suspending the enforcement of said Order of the Secretary of Agriculture is not granted, the defendants will, before the hearing upon the application for temporary injunction as prayed in said Petition, have it within their power, and they will, proceed to enforce the penalties provided for violation of said Order by the Packers and Stockyards Act, 1921, and will institute a multiplicity of suits against the petitioner on each of the grounds of supposed violation aforesaid and otherwise proceed in derogation of the right of the petitioner to collect rates and charges for stockyard services rendered under the Schedule of Rates and Charges or tariffs now on file by petitioner with the Secretary of Agriculture, and that upon compliance with said Order the petitioner would be unable to collect from the users of its service the differences between the rates fixed by the said Order of the Secretary and the rates prescribed in the Schedule of Rates and Charges now on file with the Secretary of Agriculture. In the event the relief in said petition

158 prayed was finally granted by this Court, the amounts which petitioner alleges it is legally entitled to receive according to such established and filed rates and charges would be wholly lost to the petitioner, causing it loss from day to day in the State of Missouri, and plaintiff would be irreparably deprived thereof in violation of the Fifth Amendment of the Constitution of the United States.

Now, Therefore, it is by this Court ordered that the defendant Henry A. Wallace, Secretary of Agriculture, and each and all of the officers, attorneys, solicitors, agents and representatives of the United States, and all other persons acting or claiming, or assuming to act, for and under authority of the defendants, or either of them, and all other persons who now seek or attempt, or shall hereafter seek or attempt, to interfere with or abridge the right of the plaintiff or do any act in any wise militating against the right of the plaintiff to collect, demand, receive and retain rates and charges for stockyard services at the Kansas City Stock Yards in accordance with the Schedule of Rates and Charges of petitioner now on file with the Secretary of Agriculture be, and they are hereby, restrained and enjoined from instituting, prosecuting, or aiding in instituting or prosecuting, any proceeding or action for penalties, fines or imprisonment against the petitioner or its agents because of failure to comply with said Order of the Secretary of Agriculture of June 14, 1933, and the enforcement, operation and execution of said Order, and each and every part thereof, by the defendants or any persons acting or claiming, or assuming to act, for or under the authority of defendants, is hereby stayed and suspended for 60 days from the date of this Order, or until further order of this Court.

Provided, however, that the petitioner shall deposit with the Clerk of this Court on Monday of each and every week hereafter while this order, or any extension thereof, may remain in force and effect and pending final disposition of this cause, the full amount by which the charges collected under the Schedule of Rates in effect exceeds the amount which would have been collected under the rates prescribed in the Order of the Secretary, together with a verified statement of the names and addresses of all persons upon whose behalf such amounts are collected by petitioner.

ARBA S. VAN VALKENBURGH,
ALBERT L. REEVES,
MERRILL E. OTIS,

*Judges.*

[File endorsement omitted.]

160 In United States District Court

In Equity—No. 2328

[Title omitted.]

*Order continuing in force temporary restraining order heretofore granted*

Filed September 19, 1933

Now on this 19th day of September 1933, comes the petitioner as plaintiff herein, and it appearing that the hearing upon the application for a temporary injunction herein has been continued, and that the time allowed by law for the filing of answer herein has been extended by the Court at the request of the defendants;

And the Court being duly advised in the premises, finds that immediate and irreparable injury and damage will result to petitioner unless the temporary restraining order hereinbefore issued is extended and continued in force and effect,

Now, therefore, it is by This Court Ordered that the
161 temporary restraining order herein issued be and hereby is continued in whole and in accordance with all the terms and conditions thereof in force and effect until decision by this Court upon the application for a temporary injunction as prayed for in the petition filed herein.

ARBA S. VAN VALKENBURGH,
*Circuit Judge.*

ALBERT L. REEVES,
*District Judge.*

———— ————,
*District Judge.*

The Clerk is directed to enter an identical order in Causes 2329 to 2378, both inclusive, in equity, by this Court, making the identical Order effective in each of said cases.

Dated this 19th day of September 1933.

ARBA S. VAN VALKENBURGH,
*Circuit Judge.*

ALBERT L. REEVES,
*District Judge.*

———— ————,
*District Judge.*

[File endorsement omitted.]

162 In United States District Court

In Equity—No. 2328

[Title omitted.]

And in Equity Cases No. 2329–2378, inclusive, which are companion cases to the above-entitled case.

*Answer*

Filed November 25, 1933

Come now the defendants in the above-entitled cause and companion cases, and make answer to the petitions hereinbefore filed as follows:

1. Defendants admit the allegations contained in Sections I to III of said petitions.

2. Answering Section V of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section V of said petitions and particularly subsection (a) thereof, defendants admit that the evidence shows that the diminution in the net moneys available to owners of petitioner market agencies in 1931, as compared with the net moneys available to such owners in 1929, was due in part to
163 a reduction of approximately 13% in gross revenues, and that petitioner market agencies did not reduce proportionately their operating costs, but defendants deny that such costs could not have been reduced. Defendants are without knowledge as to the amount of the selling and buying charges collected by petitioner market agencies during the year 1932 or during the first five months of the year 1933, but say that such matters are not relevant or material to the determination of these cases and that proof thereof is not admissible before this Court.

(b) Further answering Section V of said petitions and particularly subsection (b) thereof, defendants admit that the Secretary found in his Order (Paragraphs 142 and 143) that it is reasonable to expect a good and experienced salesman of cattle and calves to sell 29,000 head of cattle and calves per year; such a salesman of hogs to sell 85,000 head of hogs per year; and such a salesman of sheep to sell 250,000 head of sheep per year. Defendants say that the above estimates of what constitutes a reasonable year's work for salesmen are below the estimates of those salesmen who testified, and that a considerable number of salesmen now employed by petitioner market agencies at Kansas City have attained and exceeded the standard of per-

formance mentioned in the Order, notwithstanding the highly competitive and overmanned condition existing at the Kansas City market. Defendants admit that the Secretary found that the conditions under which salesmanship is performed at the Kansas City market customarily include services incidental to the selling operation, and that these services include the maintenance of contacts with the owners of livestock prior to shipment, appraisal in the country, supervision en route to market either while on pasture, in feed lots, or at railroad feeding stations, keeping informed as to changing market conditions, sorting and grading livestock at the market, consulting with owners of livestock at the market, or advising them of the result of sales if away from the market, together with other miscellaneous duties. Defendants further admit the allegation that the evidence at the hearing showed that livestock salesmen, unlike ordinary salesmen, determine the price for the commodity they sell.

(c) Further answering Section V of said petitions and particularly subsection (d) thereof, defendants admit that
164 the costs classified as "Business-Getting and Maintaining Expenses" include amounts actually expended during the year 1931 by petitioner market agencies for traveling expenses incident to the appraisal of livestock before a sale, and supervising the feeding of livestock en route to market at feeding stations; advertising; the preparation, printing, and posting of circulars and market reports sent to stockmen; automobile maintenance and transportation; and dues and assessments paid to the Kansas City Livestock Exchange. Answering the allegation that during the period mentioned in the Order commission rates at the Chicago and St. Louis markets were substantially higher than those charged by petitioner market agencies, defendants say that such matters are not relevant or material to the determination of this case, and therefore require no answer. Answering the allegation that the undisputed evidence discloses the intensity of competitive efforts of packers and others to divert livestock from the Kansas City market, defendants admit that this is true only as to hogs.

3. Answering Section VI of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VI of said petitions and particularly subsection (a) thereof, defendants deny that the Schedule of Rates and Charges first placed under inquiry was established after hearing and investigation by the then Secretary as a just, reasonable, and nondiscriminatory schedule of rates and charges. Defendants say that such Schedule was determined in 1923 by an arbitration proceeding, that such proceeding was

conducted upon the suggestion and agreement of the private parties thereto, and that the persons who served as arbiters therein were chosen and agreed upon by said private parties and did not serve in any official capacity which they may have possessed under the Government of the United States but purely by virtue of their selection by agreement of the parties to said proceeding; that the then Secretary of Agriculture merely gave his approval to said plan of arbitration as a mode of compromise and settlement agreeable to the parties thereto. Defendants admit that the Schedule of Rates and Charges agreed upon at said arbitration in 1923 was higher by more than 10% than the rates and charges found to be unjust and unreasonable by the
165 Secretary in this proceeding and further admit that the rates and charges under inquiry expressed in percentage of net sales proceeds handled were less at the time of the hearing than 2% thereof and less than the charges for commission or brokerage service for selling other agricultural produce. Defendants further admit that during the period of the World War, and from 1913 to 1919, the rates charged by petitioner market agencies were increased by 10% and that increases of approximately 200% occurred in the cost of living, farm wages, general hourly wages, and livestock prices. But defendants say that none of the allegations in said subsection (a) is relevant or material to the determination of this case.

(b) Further answering Section VI of said petitions and particularly subsection (b) thereof, defendants admit that the Secretary stated in Paragraph 129 of his Order that the Packers and Stockyards Act, 1921, does not clothe the Secretary with authority to determine how many agencies would be required to handle properly the business at the Kansas City Stockyards. Defendants say that none of the allegations contained in said subsection (b) is relevant or material to the determination of this case.

(c) Further answering Section VI of said petitions and particularly subsection (d) thereof, defendants admit that the Secretary found (Paragraph 50 of the Order) that the demand for livestock at Kansas City, especially for hogs, is greater than that supplied by the livestock arriving at the public market and that a large number of hogs destined for local slaughter does not pass through the stockyards but is purchased directly by packers. Defendants admit that the market price determined at the public stockyards at Kansas City and elsewhere has much weight in determining the prices paid for livestock bought and sold at private stockyards, but say that such matters are not relevant or material to the determination of this case. The allegation that

the packers acquire livestock off the public market without contributing proportionately to the cost of maintenance of the public market at Kansas City is likewise wholly irrelevant and immaterial to the validity of the Secretary's Order, and to this suit.

(d) Further answering Section VI of said petitions and particularly subsection (e) thereof, defendants admitathat the
166. Order contains a finding of fact (Paragraph 19 of the Order) that livestock tends to move from producer to consumer by the most economical route.

4. Answering Section VII of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VII of said petitions and particularly subsection (a) thereof, defendants admit that the costs and expenses recognized by the Government accountant included no expenses incident to interest paid, donations to Community Chests, reserve to meet uninsurable hazards, or allowance for profits, but defendants deny the inference that the Secretary was bound by the opinion of the Government accountant in these respects, and say that the Secretary made a proper allowance for interest, reserve to meet uninsurable hazards, and profits. Answering the allegation on page 17 of the petition to the effect that the separation of species costs into functional costs such as selling, yarding, office work, administration, business getting, etc., was arbitrary and not based on any natural segregations incident to the actual performance of these functions, defendants say that the business of petitioner market agencies naturally divides itself into such functional divisions; that such divisions were followed by the accountant who testified for petitioner market agencies; and that such functional division for the purpose of determining costs is not affected by the fact that the same men commonly perform several different functions. Defendants further say that such separation of costs into functional costs is not arbitrary and that it does not vary from the facts of the business of petitioner market agencies. Defendants admit that the reasonable unit costs found by the Secretary are lower in most instances than those costs actually incurred by petitioner market agencies, and defendants say that the purpose of the inquiry was not to construct a rate order based upon costs actually incurred in maintaining an overly-competitive market, but rather to determine what costs are reasonable. Defendants further say that the Order of the Secretary is not to be tested by whether it allows costs actually incurred but rather by whether the costs allowed in the Order are in themselves reasonable to the shippers of livestock and to the market agencies.

(b) Further answering Section VII of said petitions and
167 particularly subsection (b) thereof, defendants say that the Order in Paragraphs 159 to 163 allows reasonable per head costs to cover compensation for management. Defendants admit that in Paragraph 159 of the Order the cost of management of the two cooperative market agencies on the Kansas City Stockyard is taken into account in determining fair management costs.

(c) Further answering Section VII of said petitions and particularly subsection (c) thereof, defendants admit that the Order does not allow as an element and part of the capital of petitioners any amount for going concern value. Defendants further admit that the Order holds that a rate of return of 6% on fixed capital and 7% on working capital used by petitioner is reasonable, and that the Order allows that amount only in calculating the gross return recognized and covered into the rates and charges established.

(d) Further answering Section VII of said petitions and particularly subsection (e) thereof, defendants admit that the Secretary disallowed as elements of reasonable cost, and did not cover into the rates and charges prescribed, moneys expended for donations to the Community Chests maintained by the Chambers of Commerce in Kansas City, Missouri, and Kansas City, Kansas.

(e) Further answering Section VII of said petitions and particularly subsection (f) thereof, defendants admit that the effect of the Schedule of Rates and Charges is to permit increases in rates to dealers registered under the Packers and Stockyards Act of 1921, and to permit increases in rates and charges for buying livestock.

5. Answering Section VIII of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VIII of said petitions and particularly subsection (a) thereof, defendants deny on information and belief the allegation therein contained to the effect that if the prescribed Schedule of Rates and Charges had been in force in 1931 each petitioner would have received an amount, stated in each petition, less than the total calculable costs incurred by each such petitioner in the rendition of stockyards services that year.

Defendants are without knowledge as to the truth of the
168 allegations that gross yield to each petitioner of the rates and charges collected was less in 1932 by a stated percentage than the revenue received in 1931, and that the gross yield for the first five months of 1933 was less by a stated per-

centage than that for the first five months of 1932, and also the allegation of the percentage of further reduction which the application of the prescribed rates and charges would cause each petitioner as to each species handled, but defendants say that such matters are irrelevant and immaterial to the determination of this case, and that proof thereof is not admissible before this Court.

Further answering said subsection (a), defendants say that none of the facts alleged therein is relevant or material to the validity of the Secretary's Order, or to this suit, and that the lawfulness of the rates and charges prescribed in said Order is not to be determined by whether or not each petitioner could earn a sufficient amount thereunder to cover costs as high as those heretofore incurred.

(b) Further answering Section VIII of said petitions and particularly subsection (b) thereof, defendants say that the accountant who testified for the Secretary did not in his cost study set forth the total costs of operation of petitioners for the purpose of showing what were reasonable costs, but he merely testified as to the amount of such costs as he found them. Defendants say that it is irrelevant and immaterial to the validity of the Secretary's Order and to this suit whether or not the gross yield of rates and charges prescribed in the Order, if applied in 1931, would have been less than the cost of operation of the business of any one petitioner during that year. Further answering said subsection (b), and particularly lines six to twenty-three, inclusive, thereof, defendants are without knowledge as to the truth of the allegations therein contained and they therefore deny on information and belief each and every such allegation.

(c) Further answering Section VIII of said petitions and particularly subsection (d) thereof, defendants admit that on page 89 the Order shows that 11 firms handled more than 50% of the total market volume of livestock at the Kansas City Stockyards in 1931, and that 23 firms handled over 75% of the total market volume. Defendants deny the allegation that the Order bases the rates and charges prescribed therein upon the assumption that the firms doing the largest relative volume of business operated their businesses more eco-
169 nomically and efficiently than other firms doing a lesser volume of business. Defendants deny upon information and belief all of the other allegations of said subsection (d).

(d) Further answering Section VIII of said petitions and particularly subsection (e) thereof, defendants are without knowledge as to the truth of the allegation therein contained, but say that such matter is not relevant or material to the determina-

tion of this case, and that proof thereof is not admissible before this Court.

6. Except as herein otherwise expressly admitted, defendants deny the truth of each and all of the allegations contained in said petitions.

Wherefore, having fully answered, defendants pray that the petitions be dismissed at the cost of the petitioners and for the benefit of such other order or orders as the Court may deem appropriate.

HAROLD M. STEPHENS,
*Assistant Attorney General.*
WENDELL BERGE,
*Special Assistant to the Attorney General.*
WILLIAM L. VANDEVENTER,
*United States Attorney.*
SETH THOMAS,
*Solicitor, Department of Agriculture.*
J. S. BOHANNAN,
*Attorney, Department of Agriculture.*
G. N. DAGGER,
*Attorney, Department of Agriculture.*

[File endorsement omitted.]

In United States District Court

*Decree*

Filed December 20, 1934

This cause came on for final hearing on the petition herein praying for a decree enjoining and restraining the defendants from enforcing an Order of the Secretary of Agriculture, dated June 14, 1933, in a proceeding pending before the Secretary of Agriculture known as "Secretary of Agriculture v. L. B. Andrews, et al., Docket No. 311," which Order prescribed the maximum rates and charges for stockyard services rendered by petitioner and other market agencies doing business at the Kansas City Stockyards in Kansas City, Missouri. The record made at the hearings before the Secretary was received in evidence by
170 this Court, and some additional evidence was presented by petitioner, oral arguments were made, briefs were filed and the case was fully submitted to this Court by counsel for both parties.

In accordance with the views heretofore expressed in Opinion of this Court, it is hereby

Ordered, adjudged and decreed that the petition hereinbefore filed by the petitioner be, and the same is, hereby dismissed at petitioner's cost, and that the temporary restraining order heretofore granted, be, and the same is, hereby dissolved and set aside.

It is further ordered that petitioner shall within sixty days from the date hereof, refund to the users of petitioner's services that portion of the rates and charges collected by petitioner since the 24th day of July, 1933, which is in excess of the maximum rates and charges prescribed as reasonable in the Order of the Secretary of Agriculture, dated June 14, 1933, which excess amounts have been deposited with the Clerk of this Court each week during the period since the temporary restraining order was granted, and that petitioner shall as soon as possible after the expiration of sixty days from the date of this Order file with this Court under oath a true and accurate account of the amounts so refunded, together with the names and addresses of the persons to whom refunds have been made, and also the names and addresses of persons to whom refunds are due but to whom payment has not been made, and the reasons therefor, together with a sworn statement to the effect that such account covers all the refunds which petitioner is obligated to make under the terms of this order.

Exceptions are allowed petitioner to the findings, conclusions, and decree of this Court.

Dated this 20th day of December 1934.

ARBA S. VAN VALKENBURGH,
*Circuit Judge.*

ALBERT L. REEVES,
*District Judge.*

MERRILL E. OTIS,
*District Judge.*

[File endorsement omitted.]

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199 In United States District Court

In Equity—No. 2328 (and Related Cases Numbered 2329 to 2378, Inclusive)

[Title omitted.]

*Stipulation as to consolidation*

Filed June 15, 1935

It appearing to counsel for the respective petitioners and defendants in the above entitled causes that many of the issues presented in the respective pleadings in each of said causes are common and

present in each of said causes the same questions of law and fact, and that it will serve the convenience of Court and counsel if said causes be consolidated for the purpose of trial, presentation and further proceedings therein,

200 It is hereby stipulated and agreed by and between the parties hereto that the Court may enter a suitable order of consolidation of the said causes for the purpose of trial, presentation, and further proceedings. It is understood and agreed by the parties hereto that such order of consolidation may be entered solely to serve the convenience of Court and counsel and that such order shall not prejudice in any manner the right of petitioners and each of them to several and individual presentation, consideration, and determination, by any Court having occasion to pass upon the issues herein, of such of the issues in each of said causes as are several in character and individual to each separate action.

JOHN B. GAGE,
*Counsel for Petitioners.*
HAROLD W. STEPHENS,
*Counsel for Respondents.*

JUNE 15, 1935.

[File endorsement omitted.]

In United States District Court

In Equity—No. 2328 (and Related Cases Numbered 2329 to 2378, Inclusive)

[Title omitted.]

*Order consolidating causes*

Filed June 15, 1935

Pursuant to stipulation of counsel for all parties, dated June 15, 1935, which has been filed herein, it is hereby ordered that each of the causes covered by said stipulation, the same being in equity numbered 2328 to 2378 inclusive, shall be and the same hereby are consolidated for the purpose of trial presentation and all further proceedings herein.

ARBA S. VAN VALKENBURGH,
*United States Circuit Judge.*
ALBERT L. REEVES,
*United States District Judge.*
MERRILL E. OTIS,
*United States District Judge.*

[File endorsement omitted.]

201 In United States District Court

In Equity—No. 2328 and Related Cases Nos. 2329–2378, Inc.

[Title omitted.]

*Order denying petitions for rehearing and entering joint and final decree in cases as consolidated*

Filed June 20, 1935

The petitions for rehearing, filed by plaintiffs herein by leave of Court, having been presented to the Court pursuant to the Order to Show Cause directed to the defendants herein by oral arguments and briefs of counsel for both parties, and the Court being fully advised in the premises,

It is Hereby Ordered and Adjudged by the Court, in accordance with the views expressed in the opinion of the Court, that said rehearing be not granted and the petitions for rehearing should be, and the same hereby are, denied. Exceptions are allowed to the Order of the Court denying said petitions for rehearing.

And it further appearing to the Court that by order of the Court pursuant to stipulation of counsel for all parties, the above cause and related cases bearing Docket Nos. 2329–2378, inclusive, have been consolidated for the purpose of trial, presentation and all further proceedings therein and that separate decrees entered in each of said cases as of the 20th day of December, 1934, should be set aside and withdrawn and a joint decree, in accordance with the views heretofore expressed in the opinion of the Court, be entered as of this date in the cases as consolidated in lieu of said separate decrees to constitute the finding and judgment of this Court,

It is, Therefore, Ordered, Adjudged and Decreed that the separate decrees entered in each of said cases as of the 20th day of December, 1934, be, and the same are hereby, set aside and withdrawn and that the following order, judgment and decree be substituted therefor in accordance with the views expressed in the opinion of the Court:

That the petitions heretofore filed by the petitioners be, and the same are, hereby dismissed at the respective cost of each of said petitioners and that the temporary restraining orders heretofore granted be, and the same are, hereby dissolved and set aside.

202 It is further ordered that petitioners, and each of them, shall within sixty (60) days from the date hereof, refund, or cause to be refunded by the Clerk of this Court to the users of petitioners' services that portion of the rates and charges collected by petitioners since the 24th day of July, 1933, which is in excess

of the maximum rates and charges prescribed as reasonable in the Order of the Secretary of Agriculture dated June 14, 1933, which excess amounts have been deposited with the Clerk of this Court each week during the period since the temporary restraining order was granted, and that petitioners shall as soon as possible after the expiration of sixty days from the date of this Order file with this Court under oath a true and accurate account of the amounts so refunded, together with the names and addresses of the persons to whom refunds have been made, and also the names and addresses of persons to whom refunds are due but to whom payment has not been made, and the reasons therefor, together with a sworn statement to the effect that such account covers all the refunds which petitioners are obligated to make under the terms of this Order.

Exceptions are allowed to the findings, conclusions and decree of this Court.

And the Court being advised of the intention of the plaintiffs herein to prosecute an appeal to the Supreme Court of the United States, does, in order to avoid irreparable damage to plaintiffs, suspend and stay execution upon the judgment herein entered for a period not in excess of the time allowed by law for presenting a petition for appeal herein, upon the condition, however, that the requirement for impounding set forth in the temporary injunctions granted herein shall be complied with by plaintiffs and each of them pending the application for and the allowance of such appeal.

Dated this 20th day of June 1935.

ARBA S. VAN VALKENBURGH,
*Circuit Judge.*
ALBERT L. REEVES, *District Judge.*
MERRILL E. OTIS, *District Judge.*

[File endorsement omitted.]

203 In United States District Court

*Mandate of Supreme Court*

Filed June 4, 1936

UNITED STATES OF AMERICA, *ss:*

[SEAL]

*The President of the United States of America, to the Honorable the Judges of the District Court of the United States for the Western District of Missouri, Greeting:*

Whereas, lately in the District Court of the United States for the Western District of Missouri, before you, or some of you, in

causes between F. O. Morgan, doing business as F. O. Morgan Sheep Commission Company, et al., Petitioners, and The United States of America and The Secretary of Agriculture, Defendants, in equity, No. 2328 (and relates cases Nos. 2329–2378, Inc.), wherein the Final decree of the said District Court dismissing the petitions and dissolving the temporary restraining orders was duly entered in said causes on the 20th day of June, A. D. 1935, which decree is fully set out in the record of said causes in the office of the clerk of said District Court and is incorporated herein by reference thereto;

As by the inspection of the transcript of the record of the said District Court, which was brought into the Supreme Court of the United States by virtue of an appeal sued out by F. O. Morgan, Doing Business as F. O. Morgan Sheep Commission Company, et al., agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas in the present term of October A. D. 1935, the following order was entered of record:

"On consideration of the motion of counsel for the New Amsterdam Casualty Company that the said Casualty Company be substituted as a party appellant in this cause in the place and stead of Harry J. Kennaley, doing business as Harry Kennaley Commissioner Company, the plaintiff in case No. 2356 on the docket of the District Court of the United States for the Western District of Missouri,

"It is ordered by this Court that the said motion be, and the same is hereby, granted, and that the New Amsterdam Casualty Company be, and it is hereby, substituted as a
204 party appellant herein in the place and stead of Harry J. Kennaley.

"JUNE 1, 1936."

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirty-five, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court, in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said District Court for further proceedings in conformity with the opinion of this Court.

MAY 25, 1936.

You, therefore, are hereby commanded that such further proceedings be had in such cause, in conformity with the opinion and decree of this court, as according to right and justice, and the

laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, the second day of June, in the year of our Lord one thousand nine hundred and thirty-six.

[SEAL] (Signed) CHARLES ELMORE CROPLEY,
*Clerk of the Supreme Court of the United States.*

[File endorsement omitted.]

In United States District Court

In Equity—Nos. 2328—2378

[Title omitted.]

*Supplemental answer*

Filed July 11, 1936

Come now the defendants in the above entitled cause and answer the allegation of Paragraph IV of the petitions, as follows:

205 1. Answering subparagraph (a) of Paragraph IV, defendants admit that the Secretary overruled and denied the request of each petitioner for a separate, individual, and independent hearing apart from any other of the respondents named in the notice of inquiry, but defendants deny that any of the petitioners was prejudiced thereby.

2. Answering subparagraph (b) of Paragraph IV, defendants admit that at the conclusion of the hearings held before the Examiner counsel for petitioners requested that the Examiner prepare a tentative report upon the evidence to be presented to the petitioners and the Secretary subject to oral argument as to any exceptions thereto which the petitioners might care to present and that such request was denied and no tentative report was exhibited to petitioner prior to oral argument. Answering the allegation that no oral argument upon the issues presented by the order of inquiry and the evidence taken by the Examiner was at any time had before the Secretary, defendants say that on March 24, 1933, oral argument was had before the Acting Secretary of Agriculture and that petitioners' counsel was present at such time and made a lengthy oral argument, and that petitioners' counsel made no objection at such time to the adequacy of the opportunity given for oral argument.

3. Answering subparagraph (c) of Paragraph IV, with respect to the allegation that at the time when oral arguments were pre-

sented, the Secretary of Agriculture was in Washington, D. C., at his office in the Department of Agriculture, and was neither sick, absent, nor from any other cause disabled in the performance of official duties, while defendants say that such allegation is irrelevant and immaterial as a matter of law, they nevertheless admit the facts therein alleged. Defendants deny each and every other allegation contained in said subparagraph (c). Defendants further say that the oral argument which was had on March 24, 1933, before Acting Secretary Tugwell was reduced to writing and transmitted to the Secretary of Agriculture, and that counsel for petitioners also filed with the Secretary a printed brief.

4. Answering subparagraph (d) of Paragraph IV, de-
206 fendants admit that the Secretary of Agriculture did not personally hear oral arguments, otherwise defendants deny each and every allegation contained therein.

5. Except as herein expressly admitted, defendants deny each and every allegation contained in Paragraph IV.

Wherefore, having fully answered herein the allegations of said Paragraph IV, and having fully answered all of the other paragraphs (sections) of the petitions in the answer filed November 25, 1933, defendants pray that the petitions be dismissed.

MAURICE M. MILLIGAN,
*United States Attorney.*
WENDELL BERGE,
*Special Assistant to the Attorney General.*
JOHN DICKINSON,
*Assistant Attorney General.*
G. N. DAGGER,
*Attorney, Department of Agriculture.*

On this 11th day of July 1936, leave is by the court granted to defendants to file the within supplemental answer.

(Signed) MERRILL E. OTIS, *Judge.*

[File endorsement omitted.]

In United States District Court

In Equity—Nos. 2328–2378

[Title omitted.]

*Amended application of petitioners for leave to amend petitions filed herein*

Filed September 17, 1936

Come now petitioners in each of the above cases and respectfully request the Court for leave to amend by interlineation the petitions

filed herein by striking out all of Section IV thereof and substituting therefor, by interlineation, the following:

"IV

"Petitioner alleges that petitioner was denied and failed to receive, although duly demanded, a full hearing upon the matters and things set forth in said Order of Inquiry, or any of them, and that it has not been accorded the full hearing to which it is entitled under the provisions of the Packers and Stock Yards Act of
207 1921 and under the Fifth Amendment to the Constitution of the United States, and that by reason thereof the order of the Secretary of Agriculture made herein on June 14, 1933, is null and void as not being in compliance with said statute and would if enforced deprive petitioner of its liberty and property without due process of law; that petitioner has been deprived of the full hearing to which it is entitled as aforesaid, by reason of the following matters and things, as to each of which petitioner alleges that it constitutes in and of itself and together with any other or others thereof, a denial of the full hearing to which petitioner is entitled by virtue of said statute and the Fifth Amendment to the Constitution of the United States, and petitioner expressly demands that the defendants make separate and explicit answer to each of the matters and things hereinafter set forth, irrespective of whether or not it be alleged in a separate lettered paragraph:

"(a) Henry A. Wallace, the Secretary of Agriculture, who made and signed the order of June 14, 1933, herein was not personally present when any of the testimony herein was taken and did not hear any of said testimony given, nor, on information and belief, was such testimony, or any of it, read to or by him, either the testimony offered by the petitioner or by the defendants.

"(b) All of the testimony taken in the administrative proceeding herein was heard by John C. Brooke, an examiner of the Department of Agriculture. The petitioner offered the testimony of sixty-six witnesses. The respondents offered the testimony of forty-four witnesses. As to the testimony of each one of these witnesses, the petitioner alleges on information and belief that the Secretary neither heard it nor read it, nor had it read to him, nor read or examined any fair or adequate abstract analysis or synopsis thereof.

"(c) As to the testimony of each of the aforesaid witnesses, the petitioner alleges on information and belief that the Secretary did not examine or consider the same.

"(d) As to the testimony of each of the aforesaid witnesses, the petitioner alleges on information and belief that the Secretary did not judicially appraise the same.

"(e) In the course of the administrative hearings before Examiner Brooke, the petitioner introduced one hundred
208 thirty exhibits and the respondents introduced three hundred eighty-six. Petitioner alleges on information and belief as to each of these exhibits that the Secretary did not read it, did not have it read to him, nor did he read any fair or adequate abstract, analysis or synopsis thereof.

"(f) As to each of said exhibits petitioner alleges on information and belief that the Secretary did not examine or consider the same.

"(g) As to each of said exhibits petitioner alleges on information and belief that the Secretary did not judicially appraise the same.

"(h) At the conclusion of said administrative hearings before said examiner, petitioner demanded that the Secretary personally hear oral argument on its behalf. The Secretary failed and refused to hear oral argument.

"(i) On or about the 25th day of May 1933, petitioner submitted a brief on the law and facts involved in said administrative hearings with the demand that the Secretary read and consider the same. Petitioner alleges on information and belief that the Secretary failed and refused to read said brief.

"(j) Petitioner further alleges on information and belief that the Secretary did not read any fair or adequate abstract, analysis or synopsis of said brief.

"(k) Petitioner alleges on information and belief that the Secretary did not examine or consider said brief.

"(l) Petitioner alleges on information and belief that the Secretary did not judicially appraise the arguments contained in said brief.

"(m) At the conclusion of the administrative hearings before said examiner, petitioner demanded that a tentative report upon the evidence be prepared to which it might make exceptions prior to oral argument before the Secretary thereon. Petitioner's demand was refused and no tentative report was ever prepared.

"(n) On information and belief, instead of personally considering the evidence and argument presented by petitioners and judicially appraising he same, the said Secretary, without
209 warrant or authority of law, delegated to one Rexford G. Tugwell, who purported to act in the premises as and in the place and stead of the Secretary of Agriculture, the powers and authority vested by law solely in the said Secretary, which powers and authority involved the exercise of legislative and judicial discretion and the determination of the issues with respect to the justice, reasonableness and lawfulness of the rates and charges of this petitioner. Said purported appointment of

said Tugwell as Acting Secretary of Agriculture to act in the place and stead of the said Secretary was unauthorized and illegal by reason of the fact that from the time he began to act until June 14, 1933, when the order herein was made, the said Secretary of Agriculture was in Washington, D. C., at his office in the Department of Agriculture, and at no time during said period was either sick, absent or disabled from any other cause, in the performance of the official duties of Secretary of Agriculture.

Wherefore, your petitioners severally pray the order of this Court.

JOHN B. GAGE,
FREDERICK H. WOOD,
*Counsel for Petitioners.*

[File endorsement omitted.]

In United States District Court

[Title omitted.]

*Order granting leave to amend petitions*

Filed November 6, 1936

The amended applications of petitioners in equity cases Nos. 2328–2378 to amend by interlineation the petitions therein having been duly considered by the Court and the Court being fully advised in the premises, are by the Court sustained. It is so Ordered.

(Signed) ARBA S. VAN VALKENBURGH,
*United States Circuit Judge.*
(Signed) ALBERT L. REEVES,
*United States District Judge.*
(Signed) MERRILL E. OTIS,
*United States District Judge.*

[File endorsement omitted.]

210 In United States District Court

In Equity—Nos. 2328–2378

[Title omitted.]

*Answer to petitions as amended*

Filed December 4, 1936

Come now the defendants in each of the above cases and answer the amended petitions as follows:

1. Defendants reiterate and adopt all of the allegations contained in the answer originally filed herein.

2. Answering Section IV of the petitions as amended, defendants say that the matters set forth in the first paragraph of said Section as amended are conclusions of law which do not require an answer; nevertheless, defendants deny each and every allegation of said first paragraph.

Defendants answer the allegations of the separate lettered paragraphs of Section IV as follows:

(a) Answering paragraph (a), defendants admit that Henry A. Wallace, Secretary of Agriculture, who made and signed the order of June 14, 1933, herein, was not personally present when any of the testimony herein was taken and that he did not physically hear any of said testimony when it was given. Except as above expressly admitted, defendants deny each and every allegation of said paragraph (a).

(b) Answering paragraph (b), defendants admit that all of the testimony taken in the administrative proceeding [fol. 237] herein was taken at hearings before John C. Brooke, an examiner of the Department of Agriculture. Defendants admit that the petitioners offered the testimony of sixty-six witnesses and that the respondents offered the testimony of forty-four witnesses. Defendants admit that the Secretary of Agriculture did not physically hear the testimony presented. Except as above expressly admitted, defendants deny each and every allegation of said paragraph (b).

(c) Defendants deny each and every allegation of paragraph (c).

(d) Defendants say that the matter alleged in paragraph (d) is a legal conclusion which does not require an answer;
211 nevertheless, defendants deny each and every allegation of paragraph (d).

(e) Answering paragraph (e), defendants admit that in the course of the administrative hearings before Examiner Brooke, the petitioners introduced one hundred thirty exhibits and that the respondents introduced three hundred eighty-six exhibits. Except as above expressly admitted, defendants deny each and every allegation of said paragraph (e).

(f) Defendants deny each and every allegation of paragraph (f).

(g) Defendants say that the matter alleged in paragraph (g) is a legal conclusion which does not require an answer; nevertheless defendants deny each and every allegation of paragraph (g).

(h) Answering paragraph (h), defendants admit that at the conclusion of the administrative hearing before the examiner, petitioners demanded that the Secretary personally hear oral

argument on their behalf, and that the Secretary did not personally hear oral argument in the sense of being physically present when such argument was made. Defendants say that oral argument was made by counsel for petitioners on March 24, 1933, before Assistant Secretary of Agriculture Rexford G. Tugwell, and that the oral argument was stenographically reported and transmitted to the Secretary of Agriculture along with the record, briefs, and other pertinent matters in the case, and that the Secretary considered said report of the oral argument, along with the record and briefs and other pertinent matters, in arriving at the rates prescribed in the order of June 14, 1933. Defendants further say that at the hearing for oral argument before Assistant Secretary Tugwell on March 24, 1933, counsel for petitioners made no objection whatsoever on account of the absence of the Secretary from the hearing, and that counsel for petitioners fully argued his case before Assistant Secretary Tugwell without indicating any objection to having the argument before said Assistant Secretary Tugwell.

(i) Answering paragraph (i), defendants admit that on or about the 25th day of May 1933 petitioners submitted
212 a brief on the law and facts involved in the administrative proceeding. Except as above expressly admitted, defendants deny each and every allegation of said paragraph (i).

(j) Defendants deny each and every allegation of paragraph (j).

(k) Defendants deny each and every allegation of paragraph (k).

(l) Defendants say that the matter alleged in paragraph (l) is a legal conclusion which does not require an answer; nevertheless, defendants deny each and every allegation of paragraph (l).

(m) Defendants admit the allegations of paragraph (m), but say that the facts contained in such allegations are irrelevant and immaterial as a matter of law to any cause of action which petitioners may have.

(n) Defendants deny each and every allegation in paragraph (n) except that defendants admit that from March 24, 1933, the date upon which counsel for petitioners made oral argument before Assistant Secretary of Agriculture Rexford G. Tugwell, to June 14, 1933, the date upon which the order herein was signed by Secretary of Agriculture Henry A. Wallace, the Secretary of Agriculture was in Washington, D. C., at his office in the Department of Agriculture, and at no time during said period was either sick, absent, or disabled from any other cause in the performance of the official duties of the Secretary of Agriculture. Defendants further say that the oral argument was stenographically reported and transmitted to the Secretary of Agriculture,

along with the records, briefs, and other pertinent matters in the case. Defendants further say that at the hearing for oral argument before Assistant Secretary Tugwell counsel for petitioners made no objection whatsoever on account of the absence of the Secretary of Agriculture from the hearing and that counsel for petitioners fully argued the case before Assistant Secretary Tugwell without indicating any objection to having the argument before him.

Wherefore, having fully answered, defendants pray that the petition as amended be dismissed at the cost of the
213 petitioners and for the benefit of such other order or orders as the Court may deem appropriate.

MAURICE M. MILLIGAN,
*United States Attorney,*
By RICHARD K. PHELPS, *Asst.*
JOHN DICKINSON,
*Assistant Attorney General.*
WENDELL BERGE,
*Special Assistant to the Attorney General.*
JAMES C. WILSON,
*Special Attorney.*
G. N. DAGGER,
*Attorney, Department of Agriculture.*

DECEMBER —, 1936.

Received service of copy hereof this 4th day of December, 1936.

JOHN B. GAGE,
By C. E. COWHERD,
*Attys. for Petitioners.*

[File endorsement omitted.]

In United States District Court for the Western District of Missouri, Western Division

In Equity—No. 2328 and Related Cases Nos. 2329–78

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., PETITIONERS

*vs.*

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE, DEFENDANTS

*Decree*

Filed July 9, 1937

The above entitled cause having come on regularly for trial on the 4th day of May 1937, before Judges Arba S. Van Valkenburgh,

Albert L. Reeves and Merrill E. Otis, and testimony having been offered on behalf of the parties herein and affidavits and depositions having been duly filed and proof and testimony on behalf of the petitioners and the defendants having been duly submitted and heard and oral argument having been made to the Court and Briefs filed by counsel for both sides and the cause having been fully submitted to this Court and the Court upon consideration

of the above mentioned testimony and depositions and affi-
214 davits, arguments and briefs on the 2nd of July 1937, having by the Honorable Merrill E. Otis, District Judge, duly made and filed herein a memorandum opinion, Special Findings of Facts and Conclusions of Law and having indicated judgment for the defendants.

It is on motion of counsel for the defendants.

Ordered, adjudged, and decreed that the petitions, as amended, herein filed by the petitioners shall be and the same are hereby dismissed at the petitioners cost.

———— ————,
*Circuit Judge.*
ALBERT L. REEVES,
*District Judge.*
MERRILL E. OTIS,
*District Judge.*

[File endorsement omitted.]

216 In United States District Court

In Equity—Nos. 2328–2378

[Title omitted.]

*Order continuing temporary restraining order and staying operation of order of Secretary of Agriculture, dated June 14, 1933, pending appeal to Supreme Court of United States from decree of July 9, 1937, dismissing petitions herein*

Filed August 16, 1937

Upon all the proceedings heretofore had herein, it is hereby found that the above-named consolidated causes came on to be heard before the undersigned, Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, Western Division, Arba S. Van Valkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, and Albert L. Reeves, Judge of the District Court of the United States for the Western District of Missouri, Western Division, sitting as a District Court for said Division of said District,

pursuant to the Packers and Stockyards Act of 1921 (42 Stat. 159) and the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 319); and that said Court on July 9, 1937, made and entered its joint and final decree therein dismissing the petitions filed by the petitioners herein; and that petitioners have duly filed with said Court their petition for appeal, assignments of error, prayer for reversal, and jurisdictional statement as required by the Rules of the Supreme Court of the United States; and that said
217 appeal prayed for has been duly allowed by this Court, and security for costs of said appeal has been duly filed as provided by said order of said Court, and citation to the respondents has duly issued; and that this appeal involves difficult and novel questions of law of fundamental importance, among others, questions as to the nature and scope of the quasi-judicial duty of the Secretary of Agriculture in making orders of the character involved herein; the necessity of his personally weighing and appraising the evidence as a whole in the administrative proceedings; the nature and scope of the duties cast upon respondents in such proceedings with respect to the summarizing of evidence; and the weight to be accorded to the opinion evidence in this case with respect to the potential performance of livestock salesmen; and it further appearing that unless, pending said appeal, said order signed by said Secretary on June 14, 1933, shall be wholly suspended and stayed and the temporary restraining order heretofore granted herein be continued in full force and effect, irreparable damage will result to the petitioners, and each of them, pending such appeal, should said decree be reversed on appeal; and, therefore, this Court being fully advised in the premises,

It is now hereby ordered, upon the consent of the solicitors for the respondents, that pending such appeal and the further order of this Court to be made pursuant to the final decision of the Supreme Court of the United States, said order of said Secretary of Agriculture signed June 14, 1933, shall be, and the same hereby is, suspended and stayed, and said temporary restraining order shall be, and the same hereby is, continued in full force and effect, and as a further condition of the granting of this stay that during the pendency of said appeal the conditions of said temporary restraining order shall continue in full force and effect requiring that the petitioners and each of them continue to deposit for impounding with the Clerk of the District Court for the Western District of Missouri, Western Division, monthly, on or before the 10th day of each calendar month, a sum equal to the difference between the amount that petitioners, and each of them, hereafter and up to and including the time of the final determination of said cases, receive from the rates and charges for stockyard services supplied at the Kansas City Stock

218 Yards as market agencies, and the amount that such petitioners, and each of them during said time would receive if they should render said services at the maximum rates and charges as provided in said order signed by the Secretary of Agriculture on June 14, 1933, said moneys, together with any and all other moneys heretofore deposited and impounded with said Clerk by each of said petitioners pursuant to provisions and conditions under which the temporary restraining order was issued by this Court, to be held by said Clerk pending the further order of this Court to be made pursuant to the final decision of the Supreme Court of the United States.

Entered this 16th day of August 1937.

ARBA S. VAN VALKENBURGH.
ALBERT L. REEVES.
MERRILL E. OTIS.

Consented to:

WENDELL BERGE,
HUGH B. COX,
*Solicitors for Respondents.*

JULY 21, 1937.

[File endorsement omitted.]

219 In United States District Court

*Mandate from United States Supreme Court Dated June 3, 1938*

Filed June 6, 1938

UNITED STATES OF AMERICA, *ss:*

*The President of the United States of America.*

[SEAL]

*To the Honorable the Judges of the District Court of the United States for the Western District of Missouri, Greeting:*

Whereas, lately in the District Court of the United States for the Western District of Missouri, before you, or some of you, in a cause between Fred O. Morgan, Doing Business as Fred O. Morgan Sheep Commission Company, et al., Petitioners, and The United States of America and the Secretary of Agriculture, Defendants, Equity No. 2328, and related cases Nos. 2329–78, wherein the decree of the said District Court, entered in said cause on the 9th day of July, A. D. 1937, is in the following words, viz:

"The above-entitled cause having come on regularly for trial on the 4th day of May 1937, before Judges Arba S. Van Valkenburgh, Albert L. Reeves and Merrill E. Otis, and testimony having been offered on behalf of the parties herein and affidavits and depositions having been duly filed and proof and testimony on behalf of the petitioners and the defendants having been duly

submitted and heard and oral arguments having been made to the Court and Briefs filed by counsel for both sides and the cause having been fully submitted to this Court and the Court upon consideration of the above mentioned testimony and depositions and affidavits, arguments and briefs on the 2nd day of July 1937, having by the Honorable Merrill E. Otis, District Judge, duly made and filed herein a memorandum opinion, Special Findings of Facts and Conclusions of Law and having indicated
220 judgment for the defendants.

"It is on motion of counsel for the defendants.

"Ordered, Adjudged, and Decreed that the petitions, as amended, herein filed by the petitioners shall be and the same are hereby dismissed at the petitioners cost.

"_____ _____,
"*Circuit Judge.*
"ALBERT L. REEVES,
"*District Judge,*
"MERRILL E. OTIS,
"*District Judge.*"

as by the inspection of the transcript of the record of the said District Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirty-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court, in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said District Court for further proceedings in conformity with the opinion of this Court.

APRIL 25, 1938.

You, therefore, are hereby commanded that such further proceedings be had in such cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, the third day of June, in the year of our
221 Lord one thousand nine hundred and thirty-eight.

CHARLES ELMORE CROPLEY,
*Clerk of the Supreme Court of the United States.*

[File endorsement omitted.]

In United States District Court

*Defendants' motion for order staying distribution of impounded moneys*

Filed June 7, 1938

Now come the United States and the Secretary of Agriculture, respondents herein, by their attorney, Maurice M. Milligan, and respectfully show the Court:

1. These suits, consolidated for the purpose of trial, were brought by petitioners to restrain the enforcement of an order of the Secretary of Agriculture issued on June 14, 1933, fixing the maximum rates to be charged by market agencies for buying and selling livestock at the Kansas City Stock Yards. By an opinion dated April 25, 1938, and by a further opinion dated May 31, 1938, denying respondents' petition for rehearing, the Supreme Court of the United States held that the order of the Secretary had been issued without according to petitioners the hearing required by law; and the said Court reversed the decree of this Court dismissing the petitions, and remanded the case to this Court "for further proceedings in conformity with our opinion." The mandate of the Supreme Court of the United States was received by this Court on June —, 1938.

2. Upon petitioners' applications, this Court, in the exercise of the discretion conferred upon it by Section 316 of the Packers and Stockyards Act (7 U. S. C. § 217) and by the Act of October 22, 1913 (28 U. S. C. § 46), granted on July 22, 1933, and from
222 time to time continued an interlocutory stay of the order issued by the Secretary of Agriculture on June 14, 1933, conditioned, however, upon the payment into court by petitioners of the difference between the rates established by tariffs published prior to June 14, 1933, and the lower rates fixed by the said order of the Secretary. Between July 22, 1933, and November 1, 1937, when a new rate schedule became effective by consent, petitioners paid into court pursuant to the aforesaid condition sums aggregating more than $700,000; and these moneys are now in the custody of the Clerk of this Court and subject to order of the Court made in accordance with law.

3. The said moneys were impounded by the Court in order to protect the substantial rights of all parties interested in or affected by the order of the Secretary of June 14, 1933; and the principles of equity and the provisions of the Packers and Stockyards Act alike require that the moneys shall be disposed of only in accordance with the substantial rights of such parties as duly and finally determined. No court has yet held that the excess charges collected

by petitioners under the interlocutory order of the Court were reasonable or lawful, nor has any court yet held that the rates fixed by the Secretary in his order of June 14, 1933, were unreasonable. The impounded moneys stand as security for the enforcement of the respective claims of the parties herein and of the shippers with respect to these questions. Until these questions have been duly and finally determined, no distribution of the moneys can be made which will not prejudice either the rights of petitioners to collect reasonable charges for their services or the right of the shippers not to be compelled to pay charges in excess of what is reasonable, and which will not prejudice the rights of all parties to secure an authoritative and enforceable determination as to what
223 are reasonable.

4. On June, 1938, the Secretary of Agriculture issued an order reopening the proceeding in which the aforesaid order of June 14, 1933, was entered. In the said order of June 1, 1938, the Secretary of Agriculture directed that the "Proceedings, Findings of Fact, Conclusions and Order" as issued by the Secretary of Agriculture on June 14, 1933, be served upon the market agencies operating on the Kansas City Stockyards as the tentative findings of fact, conclusions and order of the Secretary of Agriculture in the reopened proceeding, and that the said market agencies be given thirty days from the date of service of the said order of June 1, 1938, within which (1) to file exceptions to said tentative order, conclusions, and findings of fact, in accordance with the rules of practice adopted by the Secretary of Agriculture, governing the procedure in such cases, and (2) to make any appropriate motions or objections with respect to further proceedings in the case. A copy of the said order of June 1, 1938, is attached hereto as an exhibit. In the proceeding reopened by the said order of June 1, 1938, the Secretary, as provided by the rules of procedure adopted for such cases on September 14, 1936, will accord to petitioners every right to which the Supreme Court of the United States has held that they are entitled. After full hearing the Secretary will determine by an order as of June 14, 1933, what rates may reasonably be charged by petitioners to their clients for the services rendered them. That order will finally determine—or if the order be the subject of litigation, the final judgment of the court in that litigation will finally determine—all the questions decisive of the rights of the parties herein and of the shippers in the moneys impounded in this
224 Court pursuant to the Court's interlocutory order of July 22, 1933. The withholding of the distribution of the said moneys pending the entry of this order by the secretary will make it possible for the question of the ultimate ownership of these

moneys to be determined in an orderly manner, will prevent a multiplicity of suits, will assure that the moneys will be disposed of in accordance with equity and law, and will protect the substantial rights of all parties whose rights and interests are involved.

Wherefore, the United States and the Secretary of Agriculture, by their attorney, Maurice M. Milligan, respectfully move the Court to enter an order staying all further proceedings herein and directing the Clerk of this Court to retain in his custody the moneys impounded in this Court pursuant to the interlocutory order made by the Court on July 22, 1933, and continued in effect from time to time by further orders of this Court, until such time as the Secretary, proceeding with due expedition, shall have entered a final order in the proceeding reopened by him by order of June 1, 1938, and such order shall have become effective or its merits have been finally adjudicated by a court of competent jurisdiction; or until further order of the Court.

MAURICE M. MILLIGAN,
*United States Attorney.*
By THOMAS A. COSTOLOW,
*Assistant.*

[*Duly sworn to by Master G. White; jurat omitted in printing.*]

225 *Exhibit A to motion*

UNITED STATES OF AMERICA

DEPARTMENT OF AGRICULTURE

JUNE 6, 1938.

Pursuant to Title 28, Section 661, U. S. Code (Section 882, Revised Statutes of the United States), I hereby certify:

1. That there are now on file in this Department the following-described original documents:

*Order reopening proceeding*

BAI Docket No. 311

SECRETARY OF AGRICULTURE *v.* L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION CO., ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MO.

2. That a true and correct copy of the original of each of said documents is attached hereto.

By direction of Henry A. Wallace, Secretary of Agriculture, and in witness whereof, the said copies of said documents
226 are hereby authenticated and the seal of the Department of Agriculture affixed hereto, and I have signed my name hereto on the day and year first above written.

[SEAL] J. D. LACROSS,
*Assistant to the Secretary of Agriculture.*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MISSOURI, RESPONDENTS

*Order reopening proceeding*

Whereas, the Secretary of Agriculture, on June 14, 1933, issued his findings of fact, conclusion and order in the above entitled proceeding, declaring that the rates and charges which were then being demanded and collected by the market agencies operating on the Kansas City Stockyards were unreasonable, and further finding and prescribing just and reasonable rates and charges set forth in detail in said order; and,

Whereas, suits were filed in the United States District Court for the Western District of Missouri by various market agencies attacking the validity of said order, and seeking an injunction against its enforcement; and,

Whereas, the court granted a temporary restraining order in which it was provided that the market agencies should im-
227 pound with the court the moneys collected in excess of the rates and charges prescribed by the Secretary of Agriculture in said order; and,

Whereas, on October 29, 1934, the District Court rendered an opinion and entered findings of fact and conclusions of law upholding the order of the Secretary of Agriculture, rejecting all the contentions of the market agencies, and adopting as its own the findings of fact made by the Secretary of Agriculture; and,

Whereas, on the appeal of the market agencies, the Supreme Court held, on April 25, 1938, that the Secretary's order was invalid because the market agencies were not fairly advised of what the Government proposed to do, and were not given opportunity to be heard upon such proposals;

It is therefore ordered that said proceeding be and the same is hereby reopened; and,

It is also ordered that the "Proceedings, Findings of Fact, Conclusion and Order," as issued by the Secretary of Agriculture on June 14, 1933, be served upon said market agencies as the tentative findings of fact, conclusion and order of the Secretary of Agriculture in this proceeding; and,

It is further ordered that said market agencies be and they are hereby given thirty (30) days from the date of service hereof within which to file exceptions to said tentative findings of fact, conclusion and order, in accordance with the rules of practice adopted by the Secretary of Agriculture, governing the procedure in such cases, and within which to make any appropriate motions or objections with respect to further proceedings in this case; and,

It is further ordered that said market agencies, if they
228 file exceptions to said tentative findings of fact, conclusion and order and desire to make an oral argument on the exceptions, may, if they wish to do so, request that such oral argument be held before the Under Secretary or Assistant Secretary of Agriculture; and,

It is further ordered that this order be served by mailing a true copy thereof, by registered mail, to the attorneys of record representing the market agencies who filed said suits.

In witness whereof the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, this the 2nd day of June 1938.

[SEAL] (Signed) H. A. WALLACE,
*Secretary of Agriculture.*

[File endorsement omitted.]

In United States District Court

*Reply of plaintiffs to defendants' motion for order staying distribution of impounded funds*

Filed June 11, 1938

Come now the plaintiffs herein by their attorneys of record and respectfully move the court to deny and overrule defendants'

motion for order staying distribution of impounded moneys held by the Clerk of this court in the Registry of the court for the following reasons:

1. Because said motion is impertinent and irrelevant to any issue presented to the court in the above entitled causes which issues have been fully and finally determined by final decree entered in accordance with a mandate of the Supreme Court.

229 2. Because the defendants and neither of them have any right, title, or interest in or to said funds so deposited in the Registry of this court with the Clerk of this court, but all of said funds, subject to the right of the Clerk to deduct the lawful charges for the custody thereof as provided by statute, are the sole property of these plaintiffs.

3. Because the allegations of said motion contained in paragraph 3 therof are predicated upon the alleged right of this court to act legislatively and to determine retroactively what rates and charges collected by petitioners are reasonable or lawful, whereas this said court is wholly without such power in fact or in law.

Plaintiffs state that as shown by the evidence at the trial of this cause the Secretary of Agriculture by a valid order effective January 1, 1926 in a proceeding under said Act known as Docket No. 11 of the Department of Agriculture, Bureau of Animal Industry, upon complaint and after full hearing, prescribed, as just and reasonable, certain maximum rates and charges for these plaintiffs, a copy of said order as approved by said Secretary being in evidence in this case as plaintiffs' Exhibit 24; that the rates and charges actually collected during the period of said impounding were lower than the maximum rates so fixed by such order of January 1, 1926, and were those set forth in Tariffs duly filed by plaintiffs with the Secretary of Agriculture under said Act on the 11th day of May 1932, in further compliance with said prior order. The copy of said order, Exhibit 24, and the admission of the defendants in their answer filed in this case that the rates set forth in the said Tariffs filed by plaintiffs on the 11th day of May 1932, were lower by more than ten

230 percent than the maximum rates prescribed by said prior order effective January 1, 1926, are by reference made a part of this motion.

Plaintiffs state that the Secretary of Agriculture has not in any proceeding after full hearing by valid order determined such rates and charges to be unjust, unreasonable, discriminatory or unlawful, and that as actually collected by plaintiffs at all of the said times in defendants' motion mentioned the said rates were the legal rates which plaintiffs under said Act were required to and did collect.

4. Because the alleged determination of the Secretary to enter a new order retroactively effective "as of June 14, 1933" in respect of which "the rules of procedure adopted for such cases on September 14, 1936" will be followed, cannot under the said Packers and Stockyards Act, 1921, determine what shall be the just and reasonable rates and charges to be charged by petitioners at or upon any date prior to five days after the actual entry and issuance thereof by the Secretary under the provisions of the said Packers and Stockyards Act, 1921, particularly Section 310 thereof, and, therefore, cannot in any manner affect or impair the right, title, and interest of the plaintiffs in and to the moneys deposited by plaintiffs with the Clerk of this court and referred to in said motion, or constitute any reason for staying or delaying the restitution thereof to the plaintiffs herein, and that any attempt by the Secretary to give a retroactive or ex post facto effect to the said proposed order in respect of said moneys so impounded, or the right, title, and interest of plaintiffs therein, would be in violation of the Constitution of the United States.

5. Because the alleged reopening of the proceedings out of which the purported order of June 14, 1933, held invalid
231 by the court arose in so-called Docket No. 311, cannot involve a lawful and legislative determination of rates by reason of the stipulation and order of modification entered by the Secretary on the 14th day of October 1937, effective as of the first day of November 1937, establishing rates thereafter to be effective and recognizing substantial changes in conditions affecting the operations of petitioners since the year 1931, the year to which the latest evidence taken related. A copy of said stipulation and order of modification is hereto attached and made a part hereof.

6. Because under the provisions of the Packers and Stockyards Act, 1921, and upon the evidence taken in connection with the proceeding referred to in defendants' motion, the Secretary proposes without authority of law under the guise of exercising his legislative power nunc pro tunc as of June 14, 1933, to attempt to act judicially and to award reparations and because such action would involve the recognition in the Secretary of authority to suspend by untimely proceedings schedules and tariffs lawfully filed by petitioners for a period of more than five years although said Act authorizes only timely suspension for stated reasons for a period of sixty days after such schedules were filed.

7. Because this court cannot properly indulge the presumption that the Secretary will at some future date render after full hear-

ing an ex post facto order holding the rates and charges collected by plaintiffs to be unlawful, and that such order would be sustained if subjected to proper court review.

8. Because withholding from petitioners of said impounded funds pursuant to said motion would improperly, unjustly and without authority of law deny to petitioners their equi-
232 table as well as legal right to the immediate possession of such funds in that it appears from the record of this proceeding that a majority of this court considering such record in an opinion rendered on the 20th day of June 1935, stated that the Secretary had departed from the methods employed in previous like cases in connection with the making of the purported order; that the drastic reduction in advertising and other costs made by the purported order gave "scant consideration to the reasonable necessities of the situation," and that the effect of the methods employed might "as suggested by the petitioners tend to weaken and to ultimately destroy the market by diverting business to more favored markets and agencies," and might tend "further to the undue restriction of agencies enabled to operate profitably with a result injurious not only to the Kansas City Live Stock Market but equally to the shippers of stock conveniently patronizing it," and because it further appears that from the record in this case that a large number of petitioners have already been compelled to discontinue business by reason of impoundings required during the period of the pendency of this case and prior to the adjudication of said order as invalid, and because others of petitioners continuing in business have suffered financially by reason of such situation to an extent which may, unless said funds are immediately restored to them, impair their ability to render in the future efficient service to those who may be called upon to use their necessary services in connection with the sale and purchase of livestock as required by said Packers and Stockyards Act.

Wherefore, these plaintiffs respectfully move the court to deny and overrule the motion of the defendants for an order staying distribution of said funds.

233 FREDERICK H. WOOD,
JOHN B. GAGE,
*Attorneys for Plaintiffs.*

THOMAS T. COOKE,
CARSON E. COWHERD,
*Of Counsel.*

[Duly sworn to by Frederick H. Olander; jurat omitted in printing.]

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

*Stipulation and order of modification of order*

SECRETARY OF AGRICULTURE

*v.*

234 L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., PETITIONERS

*Stipulation*

Whereas, pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended, the Secretary of Agriculture issued an order in the above-entitled case on the 14th day of June 1933, prescribing reasonable rates and charges to be observed by respondents for their services as market agencies; and,

Whereas, the validity of said order is in question in certain actions brought by petitioners in the District Court of the United States for the Western Division of the Western District of Missouri, said actions being now pending upon appeal from the decree of said court in the Supreme Court of the United States; and,

Whereas, petitioners, members of the Kansas City Livestock Exchange through their duly authorized agents have filed a petition with the Secretary of Agriculture alleging that substantial changes have occurred since 1931, the year on which the order was based, in practically all of the costs affecting the business of petitioners more particularly as follows:

(a) Increased and increasing costs of living.

(b) Increased cost of stationery, printing, taxes and postage.

(c) New expenses and taxes brought about by the Social Security Act.

(d) Decline in receipts of certain species of livestock.

(e) Increased volume of small lots of livestock caused
235 by increased truck receipts, and in many other ways. Petitioners further allege the value of the services rendered by them to the rate-payer has increased since 1931 because of the substantial increases in the values of livestock. In support of these allegations petitioners submit exhibits setting out statistical information relating to costs and expenses; and,

Whereas, representatives of the Department have made detailed analyses of the data submitted by petitioners herein showing the results of the operations of a number of representative market agencies for the year ended June 30, 1937, and comparisons thereof with the operations for the year 1931, the year on which the order was based, and have submitted detailed reports of their findings; and,

Whereas, the facts set forth in the petition which were examined show that changes in conditions affecting the costs of expenses of operations of petitioners do not warrant a modification of the order to the extent requested, but do warrant some modification of the rates prescribed in said order, due chiefly to (a) a substantial decrease in the gross income of the petitioner agencies which has necessitated a substantial reduction in the salaries paid to their employees and a reduction in the number of employees; (b) increasing cost of living and a trend toward increased wages for labor of a class which is to some extent employed by petitioners in the conduct of their business; (c) a marked increase in the arrival of livestock by truck with necessarily increased the handling of small consignments, occasioning more work and greater expense; (d) increased expenses due to taxes as the result of Federal and State legislation since 1931; and (e) decreased in receipts of livestock.

236 Now, therefore, the petitioners agree that if the modification of the order hereinbefore stated is granted it will be for the period from November 1, 1937, to and including April 30, 1938, and for such time thereafter as the Secretary may need for the consideration of the reports herein required, and that pending the final determination of the actions hereinbefore referred to in which the validity of said order of June 14, 1933, is in question and thereafter in the event the validity of such order be sustained in said actions, the Secretary may, without further hearing, make such further modifications of the order as he deems proper in the circumstances with the understanding, however, that no reduction will be made below the rates and charges fixed by said order of June 14, 1933, without petitioners' consent, except after a hearing pursuant to the Packers and Stockyards Act, 1921; and,

Petitioners further agree to submit to the Secretary at the close of 1937 and quarterly thereafter an itemized statement of the number of head of cattle and calves sold in each class and group and the charges collected thereon according to the provisions of the tariff as herein modified. and that the Secretary may use the information contained in such reports as a basis for considering further modification without a hearing; and,

Petitioners and the Secretary of Agriculture further agree that if a modification of the order as hereinbefore stated be granted by

the Secretary, it shall be without prejudice to either petitioners or the defendants in said actions; that a suitable motion or stipulation agreeable in form and content to the Secretary and his attorneys shall be presented to the court in connection with
237 the further impounding of funds by petitioners under orders entered in said actions; and that this stipulation shall not be considered in evidence or a part of the record, or be used by any of the parties to such actions for the purpose of affecting in any way the final determination of the issues presented by such litigation.

Respectfully submitted this eleventh day of October 1937.

(Signed) By JOHN B. GAGE,
*For and on behalf of petitioners*
*members of the Kansas City Livestock Exchange.*

*Order of modification*

The petition, information and the foregoing stipulation have been considered. Subject to the conditions set forth in the foregoing stipulation the order of June 14, 1933, is hereby modified effective on the first day of November, 1937 providing for rates and charges for the selling and buying of cattle and calves as follows, to continue in effect until further order of the Secretary:

DEFINITIONS

A consignment, for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day.

A consignment, for the purpose of assessing buying charges, is all the livestock of one species bought at any time to ship or deliver to one person on one market day.

A draft, is all those animals in one consignment weighed as a single sales or purchase classification.

A person, is an individual, a partnership, a corporation,
238 and/or an association of any such acting as a unit.

Calves, are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds and under 700 pounds.

Medium weight cattle, are animals of the bovine species, weighed in drafts, the average weight of animals in which is 700 pound and under 1,000 pounds.

Heavy weight cattle, are animals of the bovine species weighed in drafts, the average weight of the animals in which is 1,000 pounds and over.

Section A—Cattle and Calves—Selling Charges

| | Per head |
|---|---|
| Calves: | |
| Consignments of a single head | $0.40 |
| Consignments of more than one head: | |
| First 1 to 15 head | .30 |
| Next 16 to 30 head | .20 |
| Next 31 to 60 head | .15 |
| 61 head and over | .10 |
| Light weight cattle: | |
| Consignments of a single head | .70 |
| Consignments of more than one head: | |
| First 1 to 15 head | .60 |
| Next 16 to 30 head | .45 |
| Next 31 to 60 head | .35 |
| 61 head and over | .25 |
| Medium Weight cattle: | |
| Consignments of a single head | .80 |
| Consignments of more than one head: | |
| First 1 to 15 head | .70 |
| Next 16 to 30 head | .55 |
| Next 31 to 60 head | .45 |
| 61 head and over | .35 |
| Heavy weight cattle: | |
| Consignments of a single head | .85 |
| Consignments of more than one head: | |
| First 1 to 15 head | .75 |
| Next 16 to 30 head | .65 |
| Next 31 to 60 head | .55 |
| 61 head and over | .45 |

239 BUYING CHARGES

The rates for buying cattle and calves shall not be in excess of the rate prescribed herein.

In witness whereof the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, District of Columbia, this 14th day of October 1937.

(Signed) H. A. WALLACE,
*Secretary of Agriculture.*

[File endorsement omitted.]

In United States District Court

*Answer of New Amsterdam Casualty Company to defendants' motion for order staying distribution of impounded funds*

Filed June 11, 1938

Comes now New Amsterdam Casualty Company and does state to the court that on motion made in the Supreme Court of the United States the New Amsterdam Casualty Company was substituted for and in the place and stead of Harry J. Kennaley in the above entitled cause, and does further state that on the 2nd day of January 1936, the said Harry J. Kennaley was expelled from the Kansas City Live Stock Exchange and from and after said date ceased to be and was not any further engaged in the business of buying and selling livestock, or being a marketing agency under the Packers and Stockyards Act; and that by assignment duly made, the said Harry J. Kennaley did assign and transfer unto the New Amsterdam Casualty Company of Baltimore, Maryland, all of his right, title, and interest in and to all sums of money deposited and impounded with the Clerk of this court, in accordance with orders made in this cause.

It does further state that the said Harry J. Kennaley
240 died on the 9th day of January 1938.

It does further state that by virtue of the facts above, the said order of the Secretary of Agriculture dated the first day of June 1938 could not in anywise be operative or effective as far as this cause is concerned, and that said order has not and could not be served upon the said Harry J. Kennaley, nor was it served upon the New Amsterdam Casualty Company, nor would it be of any force or effect to serve the same upon the New Amsterdam Casualty Company as it is not conducting the business formerly conducted by Harry J. Kennaley, nor is it now or ever has been a marketing agency as defined in the Packers and Stockyards Act.

It does further state that the Secretary of Agriculture by his pretended action cannot now cure the failure to give the said Harry J. Kennaley during his lifetime a full hearing, and that that failure to do so when proper to be done cannot be cured by the present attempted action on the part of the Secretary of Agriculture.

It does further state that the attemped action of the Secretary of Agriculture is not in accordance with the provisions of the Packers and Stockyards Act, and that said New Amsterdam Casualty Company, the now owner of the impounded funds, is not and cannot be made a party to any hearing or proceeding

under said Packers and Stockyards Act as it is not and has not been a marketing agency.

It does further state that for the reasons above given the action of the Secretary of Agriculture in purporting to promulgate order referred to in said motion and by so doing to take away from the New Amsterdam Casualty Company its right, title, and interest in and to said impounded funds is taking
241 the property of the New Amsterdam Casualty Company without due process of law contrary to the provisions of the 5th Amendment to the Constitution of the United States.

It does further state that the amount so impounded was collected by the said Harry J. Kennaley, and that he had title to said sums and the title to said sums remained in him though the possession and custody thereof was given to the Registry of the Court under the Court's orders, and that since the mandate of the Supreme Court that any and all assertions of other parties interested or entitled to said funds have been wiped out so that at the time of the collection, deposit and impounding of said funds there was and cannot be any adverse claim of interest and title to said funds as the New Amsterdam Casualty Company is the assignee of Harry J. Kennaley the right, title and interest in and to said fund is wholly and completely vested in the New Amsterdam Casualty Company and the purported action on the part of the Secretary of Agriculture to deprive the New Amsterdam Casualty Company of the immediate possession of said funds and the purported action to undertake to deprive it of the title thereof in the future and in the manner so undertaken is depriving the New Amsterdam Casualty Company of its possession without due process of law, contrary to the 5th Amendment to the Constitution of the United States.

Wherefore, the New Amsterdam Casualty Company does pray that the court deny the motion of the Secretary of Agriculture filed in this cause, and that the court make an order directing the Clerk of this court to immediately pay over to the New Amsterdam Casualty Company the sums impounded in this cause by Harry J. Kennaley, d/b/a Harry Kennaley Commission Company, less whatever proper charges the said Clerk
242 of the Court shall have against said impounded funds.

E. R. Morrison,
Homer H. Berger,
*Solicitors for New Amsterdam Casualty Company.*

[*Duly sworn to by Homer H. Berger; jurat omitted in printing.*]

[File endorsement omitted.]

In United States District Court

*Petition for restitution of impounded funds*

Come now the petitioners by their attorneys, Frederick H. Wood, Thomas T. Cooke, and John B. Gage, and respectfully state:

1. That pursuant to the provisions of the certain
243 temporary restraining or stay order entered on the 22nd day of July 1933, by this Court, and the various extensions thereof, and between the date of said order and the first day of November 1937, these petitioners deposited with the Clerk of this Court the respective amounts set forth in the schedule hereto attached, prepared by the Clerk of this Court, marked "Exhibit A" and made a part of hereof the total amount of such deposits being the sum of Five Hundred Eighty Six Thousand Ninety-three and 32/100 Dollars ($586,093.32), in respect of which as set out in said Exhibit A, a lawful deduction for fees of the Clerk according to statute in such cases made and provided amounts to the sum of Five Thousand Eight Hundred Sixty and 95/100 Dollars ($5,860.95), leaving in the Registry of this Court and in the possession and custody of the Clerk of this Court for such distribution as the Court may order, the net amount of Five Hundred Eighty Thousand Two Hundred Thirty-two and 37/100 Dollars ($580,232.37).

2. This Court pursuant to the mandate of the Supreme Court of the United States has entered herein its decree suspending, setting aside and anulling the order of the Secretary dated June 14, 1933, referred to in the petition of the respective petitioners herein, and has issued its injunction granting, and under the terms of said decree, a permanent injunction restraining the defendants in respect of the enforcement of said order.

3. Each of the respective petitioners herein, plaintiffs in said action, are respectively entitled to prompt restitution of the net amount set out opposite their respective names in each of the re-
spective numbered cases shown in said Exhibit A as the
244 sole and exclusive property of plaintiffs, the same constituting funds of plaintiffs deposited with the Clerk of this Court pursuant to the aforesaid order of this Court, equal in amount to the sum by which the rates and charges unlawfully ordered into effect by the Secretary of Agriculture under said order of June 14, 1933, exceeded the lawful Rates and Charges prescribed in Schedules and Tariffs of Rates and Charges for stockyards services properly and duly filed with the said Secretary of Agriculture at the time hereinbefore set forth.

4. The following petitioners, plaintiff in the respectively numbered cases hereinafter set out opposite the names of such petitioners as disclosed by affidavits filed with the Clerk of the Supreme Court on the former appeals of this case, which are made a part hereof as if set out herein, together with the affidavit of A. L. Arnold, Clerk of this Court, in respect thereto, were compelled by reason of the impoundings of funds required by said order of this Court to discontinue and are no longer engaged in business as market agencies at the Kansas City Stock Yards, as in said petitions alleged, to-wit:

| No. of case | Name of petitioner | Net amount impounded |
|---|---|---|
| 2328 | Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company | $116.38 |
| 2330 | H. H. Klecker, doing business as Heinle Klecker Sheep Commission Company | 916.94 |
| 2347 | Henry F. Carnes, doing business as Henry F. Carnes Live Stock Commission Company | 472.23 |
| 2349 | Drumm-Standish Commission Company, a corporation | 2,814.87 |
| 2356 | Harry J. Kennaley, doing business as the Kennaley Commission Co | 3,034.05 |
| 2366 | J. D. McCormick, doing business as J. D. McCormick Live Stock Commission Company | 880.94 |
| 2369 | Ben L. Welch, doing business as Welch Live Stock Commission Company | 511.48 |
| 2371 | W. E. Curtis, doing business as W. E. Curtis & Company | 820.51 |
| 2374 | Walter G. Land & John E. Maze, partners, doing business as Walter G. Land Live Stock Commission Co | 749.21 |
| 2375 | Less White, doing business as Less White Live Stock Commission Co | 1,808.53 |
| 245 2362 | Ham-Knighton, doing business as Ham-Knighton Live Stock Commission Co | 3,921.60 |
| 2372 | Norman B. Greer, doing business as Greer & Company | 2,136.79 |

5. The petitioners state that those petitioners mentioned in paragraph 4 hereof, which have discontinued business, as well as others of your petitioners have in many instances been unable to secure the funds with which to pay their proportionate share of the expenses of the prosecution of these cases, including the cost of the respective appeals had therein, that others of said petitioners have been compelled by financial stress to assign to creditors, employees, and other persons part or all of such contingent right of restitution as they may have possessed with respect to their interest in said funds other than those mentioned in paragraph 4 hereof, in order to enable themselves to continue to efficiently transact their respective businesses as market agencies and to continue during said period to make the deposits aforesaid with the Clerk of this Court; that certain of petitioners have been compelled to reduce the wages of necessary employees to amounts below the compensation for which said employees were willing to continue their employment unless additional compensation was allowed to such employees for the period of their con-

tinued employment, the payment of which should be contingent upon the recovery of said deposits by such petitioners. In certain instances the partnerships formerly existing and which made such deposits as plaintiffs and petitioners herein, have been dissolved. All of which, petitioners allege may in many instances make it necessary that rights of third parties originating in petitioners arising by operation of law or contract created subsequent to the actual making of said deposits must be
246 determined or resolved in connection with the restitution and disbursement of said funds, which in equity and at law should be immediately restored and paid over to such petitioners and their respective assignees, if any, as their interests may appear.

6. Petitioners state that matters in connection with the management of the prosecution of these cases have in the past been largely handled and managed on behalf of petitioners by a committee consisting of the following named persons, all residents of Kansas City, Missouri: Bryant Poole, A. Chester Bates, Charles H. Haren, Robert A. Willis, Frank Witherspoon, E. W. Elliott, Fred H. Olander and C. A. Stuart; that each and all of said petitioners are as has been shown by the record in these cases, members of the voluntary organization known as the Kansas City Live Stock Exchange; that under the existing and valid rules of said Exchange the arbitration committees and the Board of Directors thereof are authorized and empowered to determine, after hearing and upon evidence, any controversies which may arise of a mercantile or commercial character between the members thereof; that in the event the Court should order restitution to petitioners of said amount as hereinafter prayed, petitioners believe it would be in the best interests of the parties and promote the proper distribution of said fund and restitution thereof to the respective petitioners and their assignees, and the proper prompt and expeditious determination of any controversies arising with respect to interests therein, if this Court would appoint the members of said committee hereinbefore named as assistant custodians of said funds or representatives of the Court to serve as such without compensation other than the payment of their expenses as may be allowed by Court and to supervise, un-
247 der the direction and control of the Court and in pursuance of such orders as it may from time to time make, the distribution and restitution of said funds and the discharge thereof from and in respect of any liens arising out of unpaid expenses, court costs or otherwise, in connection with the prosecution of these cases, such funds to be disbursed by checks duly issued on the proper depositories by the Clerk of this Court,

countersigned by such representatives of the Court, or a majority thereof, as the Court may from time to time determine.

Wherefore, your petitioners pray that this Court order and direct the Clerk of this Court, after the deduction of his lawful fees and expenses as hereinabove indicated, to make restitution as soon as may be to the respective petitioners, and each of them, in the above entitled cases of the funds so deposited by such petitioners as shown on Exhibit A hereto attached; that all claims or assignments arising under the rights herein arising on behalf of petitioners be filed with said Clerk on or before a date to be fixed by the Court, or be forever barred; that the persons hereinbefore named be appointed as representatives or assistant custodians of said funds to supervise such distribution and restitution, endeavoring, if possible, to settle and determine any controversies arising with respect to liens asserted by persons claiming under said petitioners through assignment or otherwise, to make recommendations to this Court for action in respect to such distribution in order that it may be assured that it be accomplished and carried out expeditiously, fairly and economically, and for such other and further orders as to the Court may seem meet and proper in the premises.

Dated this 11th day of June, 1938.

248 FREDERICK H. WOOD,
JOHN B. GAGE,
THOMAS T. COOKE,
*Attorneys for Petitioners.*

THOMAS T. COOKE,
CARSON E. COWHERD,
*Of Counsel*

[*Duly sworn to by Frederick H. Olander; jurat omitted in printing.*]

(Exhibit A omitted as it is hereafter set out as Exhibit A to the Order on Petition for Restitution of Impounded Funds filed on June 18, 1938.)

249 In United States District Court

*Decree*

Filed June 18, 1938

Come now the said plaintiffs by their attorneys and the defendants by their attorneys and the mandate of the Supreme Court of the United States having been filed in this court duly authenticated under the seal of the said Supreme Court and certified by the

court thereof, wherefore, it appears that at the October Term of said Supreme Court on the 25th day of April, 1928 upon appeal by the said plaintiffs from the decree of this court, the said Supreme Court entered and pronounced a judgment and decree reversing the decree of this court entered herein on the 9th day of July 1937:

Now, therefore, on the filing of said mandate, and in pursuance thereof, and after hearing the respective parties, it is ordered, adjudged, and decreed, and this court by virtue of the power and authority therein invested and in obedience to the said mandate doth adjudge and decree:

1. The decree entered herein on July 9, 1937 is hereby vacated, set aside and for naught held.

2. The purported order of the defendant, the Secretary of Agriculture of the United States of June 14, 1933, referred to and made a part of the petitions of the respective plaintiffs as Exhibit "A," and the same is hereby decreed void and of no effect, and is permanently suspended, enjoined, set aside and annulled, and the defendant, Henry A. Wallace, Secretary of Agriculture, and each and all of the officers, attorneys, solicitors and agents of the United States and all other persons acting or claiming or assuming to act, by or under the authority of the defendants, or either of them, are hereby forever restrained and enjoined from instituting,
250 prosecuting or aiding in instituting or prosecuting any proceeding or action in respect of the enforcement, operation, or execution of said order, and each and every part thereof.

And it is further adjudged and decreed that such other proceedings be had herein in conformity to the opinion of said Supremene Court with reference to the distribution or restitution of funds deposited by plaintiffs in the Registry of this Court with the Clerk thereof pursuant to the provisions of the temporary restraining order entered on the 22nd day of July 1933, as to law and justice may appertain, and that the parties may apply to this court upon the foot of this decree for such further orders and directions as may be necessary or seem meet and proper to the court with respect to the funds and moneys so impounded and the costs of this action.

ARBA S. VAN VALKENBURGH,
*Judge of the Circuit Court of Appeals of the United States for the Eighth Circuit.*

ALBERT L. REEVES,
*District Judge.*

MERRILL E. OTIS,
*District Judge.*

[File endorsement omitted.]

251 In United States District Court

*Order on petition for restitution of impounded funds*

Filed June 18, 1938

This cause coming on to be heard upon the petition of plaintiffs for an order of this court for the restitution to the respective plaintiffs of impounded funds heretofore respectively deposited by them with the clerk of this court herein and in the possession and custody of said clerk, between July 22, 1933, and November 1, 1937, under a temporary restraining order of this court issued herein on July 22, 1933, and various extensions thereof, and the court having considered said petition and having heard the evidence with respect thereto and the arguments of counsel for plaintiffs and defendants for and against said petition and the order prayed for thereunder, and being fully advised concerning the matter, finds that this court in accordance with the mandate of the Supreme Court of the United States has entered herein its final decree suspending, setting aside, and annulling the order of the Secretary of Agriculture of the United States dated June 14, 1933, sought to be enjoined by plaintiffs in this action and permanently enjoining the defendants from enforcing said order of said Secretary, and that said respective plaintiffs are, therefore, entitled to the restitution of said impounded funds in the respective amounts as hereinafter set out and in accordance with the prayer of said plaintiffs herein for restitution.

It is, therefore, ordered, adjudged, and decreed that:

1. The aggregate amount of funds impounded with the clerk of this court in this case is Five Hundred Eighty-Six Thousand Ninety-Three and 32/100 ($586,093.32) Dollars; and that the amount paid into said fund by each plaintiff, the amount
252 to be deducted therefrom as to each plaintiff for the payment of fees the clerk is entitled to in respect thereof, and the net amount to be restored and refunded on account of each such plaintiff is fully set out in Exhibit A, hereto attached and made a part hereof.

2. The court appoints the following persons, to-wit: Bryant Poole, A. Chester Bates, Charles H. Haren, Robert A. Willis, Frank Witherspoon, E. W. Elliott, Fred H. Olander, and C. A. Stuart, all residents of Kansas City, Missouri, and all members of the voluntary organization known as the Kansas City Live Stock Exchange, Kansas City, Missouri, as assistant custodians of said impounded funds to assist the clerk of this court, heretofore appointed and acting as custodian of said funds, in the payment, distribution, and restitution thereof; and to this end said assistant custodians shall supervise, under the direction and

control of this court and in pursuance of such orders as it may from time to time make, the payment, distribution, and restitution thereof, and the settling and determination of any and all questions and controversies arising with respect to any and all claims and liens on said impounded funds or any part thereof asserted within the time hereinafter specified by any person or persons under said respective plaintiffs through assignment or otherwise, and arising also in respect of any liens for unpaid expenses, court costs, or otherwise, in connection with the prosecution of this suit; said assistant custodians shall serve as such without compensation, but they shall be entitled to reimbursement for such expenses as they may incur in connection therewith as may be determined and allowed by this court; and that such impounded funds shall be paid and distributed only by check or checks drawn on the depository or depositories thereof,
253 signed by the clerk of this court and countersigned by such assistant custodians or by a majority of such assistant custodians.

3. The court directs that said custodian and assistant custodians shall pay and distribute said impounded funds as follows:

(a) They shall first pay to the clerk of said court the sum of Five Thousand Eight Hundred Sixty and 95/100 ($5,860.95) Dollars in payment of fees that he is entitled to by law and as such custodian.

(b) They shall then pay, distribute, and restore to each plaintiff his part of the remainder of said impounded funds as shown by Exhibit A referred to Paragraph 1 hereof, after deducting from the amount deposited into said fund by each plaintiff the amount to be paid to said clerk as fees as hereinbefore provided; provided, however, that if any claims or liens are asserted by assignment or otherwise or on account of unpaid expenses, court costs, or otherwise, in connection with the prosecution of these cases, to the refund or refunds or any part thereof that any plaintiff or plaintiffs would otherwise be entitled to hereunder, said assistant custodians, under the supervision and control of this court and subject to court order or orders in respect thereof, shall settle and determine such claims and liens and the rights of the parties with respect thereto, the court retaining full jurisdiction to make any and all further orders in regard to the payment and distribution thereof and the determination of the rights of particular parties to receive the funds and any and all other matters in connection therewith, except any such claims or liens must be filed with said custodian on or before July 11, 1938, or be forever barred from distribution under this order.

254 4. The court expressly reserves power and authority and retains jurisdiction as respects taxation and assessment

of costs and allowance for fees to its officers and appointees for services already rendered or hereafter rendered, including expenses incurred by them with respect thereto, and to make further orders with respect of distribution of said impounded funds, and to take any action deemed necessary to effectuate the purposes of this order; jurisdiction over all persons or parties affected by this order is reserved for the purpose of effectuating this order.

Entered this 18 day of June 1938.

ARBA S. VAN VALKENBURGH,
*Judge of the Circuit Court.*
ALBERT L. REEVES,
*Judge of the District Court.*
MERRILL E. OTIS,
*Judge of the District Court.*

255 *Exhibit A to order*

Stock Yards Cases—Equity 2328 to 2378 inclusive—Page 171

| Case No. | Firm Name | Collections | Earnings | Net Amounts |
|---|---|---|---|---|
| 2328 | Fred O. Morgan Sheep Comm. Co | $177.56 | $1.18 | $116.38 |
| 2329 | Ragland, Storts & Burris | 11,083.27 | 110.83 | 10,972.44 |
| 2330 | Hinie Kiecker Sheep Com. Co | 926.20 | 9.26 | 916.94 |
| 2331 | Lewis-Flournoy L. S. Comm. Co | 2,386.40 | 23.87 | 2,362.53 |
| 2332 | Maxwell-Furnish L. S. Com. Co | 10,817.13 | 108.17 | 10,708.96 |
| 2333 | John M. Nichols L. S. Com. Co | 2,368.26 | 23.68 | 2,344.58 |
| 2334 | Bowles L. S. Com. Co | 12,745.12 | 127.45 | 12,617.67 |
| 2335 | Crider Brothers Com. Co | 13,588.62 | 135.89 | 13,452.73 |
| 2336 | Charles Dixon Com. Co | 14,299.42 | 142.99 | 14,156.43 |
| 2337 | Elliott, Swain & Co | 3,727.71 | 37.28 | 3,690.43 |
| 2338 | Farrar, Davis & Campbell L. S. Com. Co | 6,609.42 | 66.09 | 6,543.33 |
| 2339 | Gladish L. S. Com. Co | 3,162.05 | 31.62 | 3,130.43 |
| 2340 | Haggart-Wilson L. S. Com. Co | 15,074.75 | 150.75 | 14,924.00 |
| 2341 | Kansas City L. S. Com. Co | 8,202.30 | 82.92 | 8,209.38 |
| 2342 | Fern O. Sanders L. S. Com. Co | 5,537.17 | 55.37 | 5,481.80 |
| 2343 | Stuart-Robinson-Hoover Co | 9,368.64 | 98.69 | 9,769.95 |
| 2344 | Wester Brothers & Smith Com. Co | 13,815.19 | 138.15 | 13,677.04 |
| 2345 | The Stagner, Pierounet & Wilson L. S. Com. Co | 10,562.18 | 105.62 | 10,456.56 |
| 2346 | Tumblyn Com. Co | 5,159.92 | 51.60 | 5,108.32 |
| 2347 | H. F. Carnes L. S. Com. Co | 477.00 | 4.77 | 472.23 |
| 2348 | Warren Cummings L. S. Com. Co | 12,283.05 | 122.83 | 12,160.22 |
| 2349 | Drumm-Standish Com. Co | 2,843.20 | 28.43 | 2,814.87 |
| 2350 | Link-Paskin | | | |
| 2351 | Long-Perry L. S. Com. Co | 21,639.54 | 216.40 | 21,423.14 |
| 2352 | Knight & Tice Sheep Com. Co | 2,860.60 | 28.61 | 2,831.99 |
| 2353 | W. M. Leitch Sheep Com. Co | 7,851.68 | 78.52 | 7,773.16 |
| 2354 | National L. S. Com. Co | 34,131.03 | 341.31 | 33,789.72 |
| 2355 | Poole-Dempsey-Rutherford L. S. Com. Co | 15,282.90 | 152.83 | 15,130.07 |
| 2356 | Harry Kennalley Com. Co | 3,064.70 | 30.65 | 3,034.05 |
| 2357 | Ehrke-Martin L. S. Com. Co | 9,357.90 | 93.58 | 9,264.32 |
| 2358 | John Clay & Co | 64,234.32 | 642.34 | 63,591.98 |
| 2359 | Wright & Baccus L. S. Com. Co | 10,659.17 | 106.59 | 10,552.58 |
| 256 | | | | |
| 2360 | Swift & Henry L. S. Com. Co | 32,980.70 | 329.81 | 32,650.89 |
| 2361 | H. Theis & Sons | 5,485.65 | 54.86 | 5,430.79 |
| 2362 | Ham Knighton L. S. Com. Co | 3,961.21 | 39.61 | 3,921.60 |
| 2363 | Laird Brothers L. S. Com. Co | 12,445.90 | 124.42 | 12,321.44 |
| 2364 | Martin, Bloomquist & Lee Com. Co | 33,020.80 | 330.21 | 32,690.59 |

| Case No. | Firm Name | Collections | Earnings | Net Amounts |
|---|---|---|---|---|
| 2365 | Moffett L. S. Com. Co. | $13,269.38 | $132.69 | $13,136.69 |
| 2366 | Jay D. McCormick L. S. Com. Co. | 889.84 | 8.90 | 880.94 |
| 2367 | Kile Com. Co. | 13,472.65 | 134.73 | 13,337.92 |
| 2368 | Ryan-Robinson Com. Co. | 15,756.85 | 157.57 | 15,599.28 |
| 2369 | Welch Livestock Com. Co. | 511.39 | 5.11 | 506.28 |
| 2370 | Witherspoon Livestock Com. Co. | 20,126.37 | 201.26 | 19,926.99 |
| 2371 | W. E. Curtis & Co. | 826.80 | 8.29 | 820.51 |
| 2372 | Greer & Company | 2,[illegible]58.37 | 21.58 | 2,136.79 |
| 2373 | Inman-Hutton L. S. Com. Co. | 4,426.10 | 44.36 | 4,381.74 |
| 2374 | Walter G. Land L. S. Com. Co. | 756.78 | 7.57 | 749.21 |
| 2375 | Less White L. S. Com. Co. | 1,917.71 | 19.18 | 1,898.53 |
| 2376 | Wilson, Egan & Co. | 32,295.93 | 322.96 | 31,972.97 |
| 2378 | Cassity S. W. Com. Co. | 16,540.16 | 165.40 | 16,374.76 |
| 2377 | Burlington L. S. Com. Co. | 20,410.53 | 204.11 | 20,206.42 |
| | Funds Deposited with Court | $566,093.32 | | |
| | Earnings of 1% | | $5,660.95 | |
| | Net Amounts | | | $560,222.37 |

[File endorsement omitted.]

257 In United States District Court

*Mandate from United States Supreme Court dated June 10, 1939*

Filed June 12, 1939

UNITED STATES OF AMERICA, *ss:*

*The President of the United States of America,*

[SEAL]

*To the Honorable the Judges of the District Court of the United States for the Western District of Missouri, Greeting:*

Whereas, lately in the District Court of the United States for the Western District of Missouri, before you, or some of you, in a cause between Fred O. Morgan, Doing Business as Fred O. Morgan Sheep Commission Company, Petitioner, and The United States of America and Secretary of Agriculture, Defendants, Equity No. 2328, and related cases Nos. 2329–78, wherein the order of the said District Court on motion for restitution of the impounded funds was duly entered in said cause on the 18th day of June A. D. 1938, which order is fully set out in the record of said cause in the office of the clerk of said District Court and is incorporated herein by reference thereto; as by the inspection of the transcript of the record of the said District Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirty-eight, the said

cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the order of June 18, 1938,
258 of the said District Court, on motion for restitution be, and the same is hereby reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said District Court for further proceedings in conformity with the opinion of this Court.

MAY 15, 1939.

You, therefore, are hereby commanded that such further proceedings be had in such cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, the tenth day of June, in the year of our Lord one thousand nine hundred and thirty-nine.

CHARLES ELMORE CROPLEY,
*Clerk of the Supreme Court of the United States.*

[File endorsement omitted.]

In United States District Court

*Respondents' motion for an order to show cause*

Filed June 27, 1939

Now come the United States and the Secretary of Agriculture, respondents herein, by their attorney Maurice M. Milligan, and respectfully show the Court:

1. These suits, consolidated for the purpose of trial, were brought by petitioners to restrain enforcement of an order of the Secretary of Agriculture issued on June 14, 1933, fixing the maximum rates to be charged by market agencies for buying and selling livestock at the Kansas City Stockyard. Upon petitioner's applications this Court, in the exercise of the
259 discretion conferred upon it by Section 316 of the Packers and Stockyards Act (7 U. S. C., Sec. 217) and by the Act of October 22, 1913 (28 U. S. C., Sec. 46), granted on July 22, 1933, and from time to time continued an interlocutory stay of the order issued by the Secretary of Agriculture on June 14, 1933, conditioned, however, upon the payment into Court by

petitioners of the difference between the rates established by tariffs published prior to June 14, 1933, and the lower rates fixed by the said order of the Secretary. Between July 22, 1933, and November 1, 1937, when a new rate schedule became effective by consent, petitioners paid into the registry of this Court pursuant to the aforesaid condition sums aggregating more than $586,000 and these moneys are now in the custody of the Clerk of this Court and subject to order of the Court made in accordance with law.

2. By an opinion dated April 25, 1938, and by a further opinion dated May 31, 1938, denying respondents' petition for a rehearing, the Supreme Court of the United States held that the order of the Secretary issued on June 14, 1933, had been issued without the full hearing required by law; and that Court reversed the decree of this Court, dismissing the petitions and remanded the cause to this Court for further proceedings in accordance with its opinion. On June 2, 1938, the Secretary of Agriculture, acting pursuant to the authority vested in him by the Packers and Stockyards Act, reopened the proceeding before him and entered upon an inquiry into the reasonableness of the rates and charges collected by petitioners in their capacities as market agencies between July 23, 1933, and November 1, 1937. On June 11, 1938, respondents filed in this Court a motion to stay all further proceedings herein and to direct the Clerk of this Court to retain in his custody
260 the moneys impounded in this cause until such time as the Secretary of Agriculture proceeding with due expedition should have entered a final order in the proceeding before the Secretary of Agriculture commenced June 2, 1938. This motion was denied and from the order of this Court, granting a counter-motion by petitioners to distribute the impounded fund among them, an appeal was taken by respondents to the Supreme Court of the United States.

3. By an opinion dated May 15, 1939, the Supreme Court of the United States held that petitioners were prohibited by law from collecting any unjust, unreasonable, or discriminatory charge; that it was the duty of this Court to dispose of the amounts collected by petitioners, with the aid of this Court and held in custodia legis, in such a manner as to avoid an unjust and unlawful result; that the Secretary of Agriculture might make a determination which, if supported by evidence and made in a proceeding conducted in conformity with the statute and with due process of law, would afford an appropriate basis for action by this Court in making the distribution of the said moneys; and that this Court should retain the said moneys until such time as the Secretary of Agriculture, proceeding with due expedition, should have entered a final order in

the proceeding pending before him. By its mandate dated June 10, 1939, the Supreme Court reversed the order of this Court directing the distribution of the impounded moneys and remanded the cause to this Court for further proceedings in accordance with the opinion.

4. Upon reopening the proceeding before him, The Secretary of Agriculture, on June 2, 1938, directed that the findings of
261. fact and order promulgated June 14, 1933, be served on petitioners herein as the tentative findings of fact and order. Petitioners were allowed thirty days in which to file exceptions and to file such motions as they might desire to make and the time was subsequently extended to August 15, 1938, at the request of the petitioners. On August 15, 1938, petitioners filed exceptions to the tentative findings of fact and order and also filed an affidavit of bias and prejudice, an affidavit of bias and prejudice, an affidavit as to change conditions since the closing of the evidence, a statement objecting to the procedure and the rulings of the examiner, and further objections with respect to the Secretary's order dated June 2, 1938, reopening the proceedings. On August 26, 1938, the Secretary overruled petitioners' motion to vacate the proceedings because of the bias and prejudice, granted petitioners' motion to allow the taking of new evidence as to change of conditions subsequent to June 14, 1933, and reserved his ruling as to all other motions.

5. On August 26, 1938, the Secretary of Agriculture designated an examiner to hear the parties with respect to exceptions filed to the tentative findings of fact and order, to take additional evidence, and to prepare and submit a report to the parties. Pursuant to that order, the designated examiner held a hearing commencing on September 12, 1938, in Washington, D. C. At that time argument was heard upon petitioners' exceptions to the tentative report and additional evidence was received. The hearing was then adjourned until October 3, 1938, to Kansas City, Missouri, for the taking of furtner evidence. After the close of the hearing counsel for petitioners and counsel for the government submitted proposed, findings of fact and proposed orders. On January 17, 1939, the examiner issued his report to the parties in accordance with the
262 procedure prescribed in the "Order Promulgating Rules of Practice to Govern Proceedings under the Packers and Stockyards Act, 1921, as amended." (Sept. 14, 1936; 1 Fed. Reg. 1362.) Counsel for petitioners then filed a motion to suppress the examiner's report and grant a rehearing, which was denied by the Secretary on March 4, 1939. Counsel for petitioners and counsel for the government filed exceptions to the Master's report and on March 29, 1939, the exceptions were argued before the Secretary

of Agriculture. On June 20, 1939, the Secretary issued in compliance with law, his proceedings, findings, conclusions, and order and served copies of the same upon the petitioners in this cause. A true copy of the said proceedings, findings, conclusions, and order is filed with the Clerk of this Court, marked "Exhibit A," and made a part hereof.

6. On June 20, 1939, the Secretary of Agriculture, in connection with the promulgation of the aforesaid proceedings, findings, conclusions, and order, found and determined that the rates and charges set forth in paragraph 180 of Exhibit A were just and reasonable rates and charges for stockyard services performed by market agencies at the Kansas City Stockyard between July 23, 1933, and November 1, 1937; that rates and charges collected by petitioners for stockyard service performed at the Kansas City Stockyard between July 23, 1933, and November 1, 1937, were unjust, unreasonable, and discriminatory rates and charges; and that the rates and charges set forth in paragraph 180 of Exhibit A would afford an appropriate basis for action by this Court in determining the proper disposition of such portion of the rates and charges collected by petitioners for stockyard services performed by them at the Kansas City Stockyard between July 23, 1933, and
263 November 1, 1937, as have been paid into the registry of this Court pursuant to the order of this Court dated July 23, 1933, and continued in effect by the Court from time to time thereafter.

7. All amounts paid into the registry of this Court, pursuant to the interlocutory order made by the Court on July 22, 1933, and continued in effect from time to time by further orders of this Court, are amounts collected by petitioners for stockyard services performed at the Kansas City Stockyards in excess of the just, reasonable, and non-discriminatory rates and charges for such services, and in excess of the just, reasonable, and non-discriminatory charges for such services as determined by the Secretary of Agriculture on June 20, 1939. The moneys impounded in the registry of this Court were impounded by the Court in order to protect the substantial rights of all parties interested in or affected by the order of the Secretary of Agriculture promulgated June 14, 1933. The principles of equity and the provisions of the Packers and Stockyards Act now require that the said moneys shall be distributed to those persons from whom the petitioners have unlawfully and unjustly collected the said moneys.

Wherefore, the United States and the Secretary of Agriculture, by their attorney Maurice M. Milligan, respectfully move the Court to enter an order requiring petitioners to appear before this Court at ten o'clock on July 24, 1939, at Kansas City, Missouri, or as

soon thereafter as counsel can be heard, and show cause why the moneys now impounded in the registry of this Court in this cause should not be restored and repaid to those persons from whom petitioners have collected the aforesaid moneys, or to their duly designated representatives or assigns.

MAURICE M. MILLIGAN,
*United States Attorney.*

[File endorsement omitted.]

264 *Exhibit A to respondents' motion for order to show cause*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

*Proceedings, findings of fact, conclusions, and order*

Secretary of Agriculture

*vs.*

L. B. Andrews, doing business as L. B. Andrews Livestock Commission Company; A. B. Bachman, doing business as A. B. Bachman Livestock Commission Company; W. N. Baucus and Ira Kimmons, a partnership, doing business as Baucus & Company; Charles N. Bird; Charles E. Blount, doing business as Charles E. Blaunt & Company; Frank Boddington, doing business as Frank Boddington Livestock Commission Company; Bowles Livestock Commission Company; Burlington Livestock Commission Company; Henry F. Carnes, doing business as Henry F. Carnes Livestock Commission Company; Cassidy Southwestern Commission Company; John Clay, F. G. Connor, C. A. Kleman, and J. G. Forrest, a partnership, doing business as John Clay & Company; Crider Brothers Commission Company; Warren Cummings, doing business as Warren Cummings Livestock Commission Company; W. E. Curtis,
265 doing business as W. E. Curtis & Company; Charles Dixon Commission Company; E. K. Corrigan and Karl N. Soeder, a partnership, doing business as Corrigan & Soeder; Drumm Standish Commission Company; Ehrke-Martin Livestock Commission Company; E. W. Elliott and R. K. Swain, a partnership, doing business as Elliott, Swain & Company; Farmers Union Livestock Commission; Farrar, Davis & Camp-

bell Livestock Commission Company; Link Fasken, doing business as Link Fasken Commission Company; Gillespie & Jones Livestock Commission Company; W. G. Gladish, doing business as Gladish Livestock Commission Company; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership, doing business as Goodson-Green Company; Norman B. Greer, doing business as Greer & Company; O. C. Haggart, John H. Wilson and Glenn Haggart, a partnership, doing business as Haggart, Wilson Livestock Commission Company; W. F. Humphrey, doing business as W. F. Humphrey & Company; Inman-Hutton Livestock Commission Company; W. E. Burrus, doing business as Interstate Livestock Commission Company; J. G. Jackson; Jefferson-Lowry-Davis Commission Company; W. M. Liggett and Roy K. Sanson, a partnership, doing business as Kansas City Livestock Commission Company; Harry Kennaley, doing business as Harry Kennaley Commission Company; W. C. Kile, doing business as W. C. Kile Livestock Commission Company; H. H. Klecker, doing business as Hinie Klecker Sheep Commission Company; E. L. Knight and E. Tice, a partnership, doing business as Knight & Tice Sheep Commis-
266 sion Company; Harmon C. Knighton, doing business as Ham Knighton Commission Company; S. Kraus; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership, doing business as Laird Bros. Livestock Commission Company. Walter G. Land, doing business as Walter G. Land Livestock Commission Company; W. M. Leitch Sheep Commission Company; L. Levy; R. H. Lewis and S. H. Flournoy, a partnership, doing business as Lewis-Flourney Livestock Commission Company; A. E. Long and Robert B. Perry, a partnership, doing business as Long-Perry Livestock Commission Company; Martin Bros. & Lee Livestock Commission Company; A. J. Maurer; Grover C. Maxwell, doing business as Grover C. Maxwell Commission Company; H. B. Dorsett, doing business as M. K. & T. Commission Company; T. S. Moffett, H. M. Baker and J. M. McLain, a partnership, doing business as Moffett Livestock Commission Company; Fred O. Morgan, doing business as Fred O. Morgan Commission Company; Jay D. McCormick, doing business as Jay D. McCormick Livestock Commission Company; McDonald Livestock Commission Company; Roy W. Nance, doing business as Roy W. Nance Livestock Commission Company; National Livestock Commission Company of Kansas City; John M. Nichols, doing business as John M. Nichols Livestock Commission Com-
pany; E. E. Sutton, doing business as O. K. Cattle
267 Company; W. O. Park; W. H. Peed, doing business as W. H. Peed Livestock Commission Company; K. L. Pet-

erson, and W. F. Humphrey, a partnership, doing business as K. L. Peterson & Company; Bryant Poole, D. L. Dempsey, and James Rutherford, a partnership, doing business as Poole-Dempsey-Rutherford Livestock Commission Company; Producers Commission Association; J. M. Ragland, W. B. Storts, and W. L. Burrus, a partnership, doing business as Ragland, Storts & Burrus; M. W. Rice and George E. Kirk, a partnership, doing business as Rice & Kirk; George P. Robinson and Joe R. Hoover, a partnership, doing business as Robinson-Hoover Commission Company; F. W. Banks and C. A. Rountree, a partnership, doing business as Rountree-Banks; Ryan-Robinson Commission Company; Fern O. Sanders, doing business as Fern O. Sanders Livestock Commission Company; William M. Schwartz, Joseph M. Nolan, and Lawrence Feaman, Jr., a partnership, doing business as Schwartz-Feaman-Nolan Company; E. F. Searls, doing business as George W. Searls & Son; The Stagner, Pieronnet & Willis Livestock Commission Company; B. C. Stanley, doing business as Stanley Commission Company; C. A. Stuart, doing business as C. A. Stuart & Company; Swift & Henry Livestock Commission Company; George S. Tamblyn, doing business as Tamblyn Commission Company; L. Knop, Henry F. Thies, E. J. Thies, F. W. Thies, and A. C. Thies, a partnership, doing business as H. Thies & Sons; Ben L. Welch, doing business as Welch Livestock Commission Company; Dan Wester, R. W. Wester, and Joseph Smith, a partnership, doing business as Wes-
268 ter Bros. & Smith Commission Company; J. Less White, doing business as Less White Livestock Commission Company; Wilson, Egan & Company; Witherspoon Livestock Commission Company; Curtis A. Wood; W. E. Woodford, doing business as W. E. Woodford Livestock Commission Company; Ralph W. Wright; Ralph W. Wright and Wm. N. Baucus, partners, doing business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson, and Chas. G. Smith, partners, doing business as John Clay and Company; L. E. Tice, doing business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, partners, doing business as Laird Bros. Livestock Commission Company; Walter G. Land and John E. Maze, partners, doing business as Walter G. Land Livestock Commission Company; Charles F. Vieregg and Robert H. Stover, partners, doing business as W. M. Leitch Sheep Commission Company; A. E. Long, Robert B. Perry, and B. W. Perry, partners, doing business as Long-Perry Livestock Commission Company; Martin, Blomquist & Lee Commission Company, a corporation; Grover C.

Maxwell and Ben J. Furnish, partners, doing business as Maxwell & Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz, and Louise McGrew Moffett, a partnership, doing business as the Moffett Livestock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, partners, doing business as the Ragland, Storts, and Burrus Livestock Commission Company; Lawrence Feaman and J. M. Nolan, partners, doing business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a corporation; J. Less White and O. C. Seamans, a partnership, doing business as the Less White & Seamans Livestock Commission Company;
269 R. W. Wester and Joseph P. Smith, partners, doing business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, partners, doing business as Graybill and Stephenson; Great Western Order Buying Company, a corporation; Dave Hamer, doing business as Dave Hamer Livestock Commission Company; and Harry Conley, W. H. Cripe, and J. Ed Freed; Leo Barnes, doing business as Leo Barnes Sheep Comm. Co.; E. K. Corrigan and J. P. Corrigan, doing business as E. K. Corrigan & Co.; Lee A. Cox, doing business as Lee A. Cox Comm. Co.; O. E. Crane, doing business as O. E. (Bus) Crane Livestock Comm. Co.; Home Livestock Comm. Co., a corporation; Hoover-O'Neal Comm. Co., a corporation; Clay A. Hosmer, doing business as Clay Hosmer and Son; Harold W. Cripe and Bernhardt Block, doing business as Independent Order Buying Company; Frank H. Connor, Alan F. Wilson, and Charles G. Smith, doing business as C. A. Kleman; John C. Long, doing business as John Long Comm. Co.; John G. Magrath, doing business as Magrath Livestock Comm. Co.; Vint D. Shalkoski, doing business as Midwest Sheep Comm. Co.; F. J. Monsche, doing business as F. J. Monsche & Co.; J. A. Prevost, doing business as Prevost Order Buying Co.; Karl N. Soeder, doing business as Karl N. Soeder & Co.; George W. Tennyson, doing business as George W. Tennyson Order Buying Co.; Fred E. Witter and I. R. McAdams, doing business as Witter and McAdams Livestock Comm. Co.; Frank Standish of Frank Stand-
270 ish Co.; W. R. Hensley of Great Western Order Buying Company; Ben W. Perry of Perry Livestock Commission Co.; Edward W. Brown, a partner with George S. Tamblyn, doing business as Tamblyn Comm. Co.; Edward W. Brown, a partner with Wm. L. Tamblyn, doing business as Tamblyn Comm. Co.; C. A. Stuart of Stuart-Robinson Co., a corporation; C. A. Stuart, a partner with Harmon G. Knighton, and W. Scott Stuart, doing business as Stuart-Robinson Co.; Orville

E. Crane, a partner of the former firm of Knighton and Crane Livestock Commission Co.; E. W. Houx, a partner with A. B. Robinson and W. L. McCandless, doing business as Drumm Commission Company; K. Bowles, administratrix for T. L. Bowles, doing business as Bowles Livestock Comm. Co.; W. R. Hensley, a partner in Great Western Order Buying Co.; Fern O. Sanders, partner of Sanders Bros.; L. S. Comm. Co.; Clay W. Stephenson of Graybill & Stephenson; H. W. Cripe, son of W. H. Cripe, deceased; W. C. Bradshaw of Moffett Livestock Comm. Co., Respondents

PROCEEDINGS

1. This is a proceeding under Title III of the Packers and Stockyards Act, 1921, instituted by the Secretary of Agriculture according to his order of April 7, 1930. By this order of inquiry and notice of hearing, the Secretary of Agriculture directed that an inquiry be made into the reasonableness and lawfulness of all rates and charges provided in the tariffs of the respondent market agencies at the Kansas City stockyard, Kansas City, Missouri.

2. Said order of inquiry and notice alleged that the respondents were registered and doing business under the Packers and Stockyards Act, 1921, as market agencies engaged in the business of buying and/or selling livestock on a commission basis at the Kansas City stockyard in Kansas City, Missouri, which has been found by the Secretary of Agriculture to be a "stockyard," as that term is defined in Title III of the Act, and posted as such; that in accordance with the requirements of said Act, respondents had theretofore filed, published, and put into effect a schedule of rates and charges for their services as market agencies as set
271 forth in their tariffs and supplements thereto; that the interest of shippers, producers of livestock who patronize respondent agencies, and the public generally requires that inquiry be instituted under Title III of the Act for the purpose of determining the reasonableness and lawfulness of the rates and charges of all respondents named therein as set forth in their tariffs and supplements thereto.

3. Notice of such hearing was given to the respondents by serving upon them a copy of said order and notice. Pursuant to this order and notice, a hearing was held at Kansas City, Missouri, before an Examiner designated by the Secretary of Agriculture, and said hearing began on December 3, 1930, and concluded on February 10, 1931. The respondents who were members of the Kansas City Livestock Exchange were present by counsel throughout the hearing. The following respondents were not present by counsel: The Farmers Union Livestock Com-

mission and the Producers Commission Association, whose respective managers entered their appearance at the hearing; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership, doing business as Goodson-Green Company, who were succeeded by O. C. Green and Robert Coble, a partnership, doing business as Goodson-Green Company; J. G. Jackson; W. O. Park; E. F. Searls, doing business as George W. Searls & Son; and Curtis A. Wood. The following respondents had ceased to do business on the Kansas City market at the time the hearing commenced: A. B. Bachman, doing business as A. B. Bachman Livestock Commission Company; Charles N. Bird; S. Kraus; L. Levy; H. B. Dorsett, doing business as M. K. & T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Livestock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; F. W. Banks and C. A. Rountree, a partnership, doing business as Rountree-Banks; and W. E. Woodford, doing business as W. E. Woodford Livestock Commission Company. Certain changes in the organization of the respondents had taken place as follows: Charles E. Blount, doing business as Charles E. Blount & Company, was succeeded by Charles E. Blount and Earnest E. Skaggs, doing business as Blount-Skaggs Company; John Clay, F. H. Connor, C. A. Kleman, and J. G. Forrest, a partnership, doing buisness as John Clay & Company, succeeded by John Clay, F. H. Connor, A. F. Wilson and C. G. Smith, a partnership, doing business as John Clay and Company; W. M. Liggett and Roy K. Sanson, a partnership, doing business as Kansas City Livestock Commission Company, succeeded by W. M. Liggett, doing business as the Kansas City Livestock Commission Company; E. L. Knight and E. Tice, a partnership, doing business as Knight & Tice Sheep Commission Company, succeeded by Lawrence E. Tice, doing business as Knight and Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership, doing business as Laird Bros. Livestock Commission Company, succeeded by J. M. Laird and G. T. Laird, a partnership, doing business as Laird Brothers Livestock Commission Company; W. M. Leitch Sheep Commission Company, succeeded by Charles F. Vieregg and Robert H. Stover, a partnership, doing business as the W. M. Leitch Sheep Commission Company; A. E. Long and Robert B. Perry, a partnership, doing business as Long-Perry Livestock Commis-
272 sion Company, succeeded by A. E. Long, Robert B. Perry, and B. A. Perry, a partnership, doing business as Long-Perry Livestock Commision Company; K. L. Peterson and W. F. Humphrey, a partnership, doing business as K. L. Peterson & Company, succeeded by K. L. Peterson, doing business as K. L. Peterson and Company. Counsel for respondent market agencies

who are members of the Kansas City Livestock Exchange entered appearances for those firms whose organization had been changed.

4. Oral argument was had before the Acting Secretary of Agriculture on March 27, 1931, and respondents' counsel submitted a brief on behalf of the members of the Exchange.

5. On May 18, 1932, the Acting Secretary of Agriculture issued an order directing that on and after thirty (30) days from the date of the order the respondent market agencies, and each of them, cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges then on file with the Secretary of Agriculture; that on and after said thirty days neither the respondent market agencies, nor any of them, should publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge deemed in said order to be just, reasonable, and nondiscriminatory for the furnishing of such service; that at least ten days prior to the date on which said order would become effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Kansas City stockyard, Kansas City, Missouri, and all rules and regulations changing, affecting, or determining such rates or charges, and that no rate or charge so shown for any such stockyard services be in excess of the rate or charge determined by said order to be just, reasonable, and nondiscriminatory for such service. The effective date of the order was thereafter extended to July 18, 1932.

6. On May 26, 1932, many of the respondents filed petitions alleging in detail the general economic changes which had developed in the United States since the year 1929, that being the year of the specific financial experience of respondents which the Secretary had used in the determination of the seasonableness of respondents' rates, and further alleging in detail the particular effect upon the business of such market agency of said general changes, especially with respect to the volume of business handled by each of such market agencies. Each of the petitions prayed that the order of the Acting Secretary of Agriculture, dated May 18, 1932, be withdrawn and that this proceeding be reopened for reinvestigation of the matters and things referred to in the order of inquiry and be set down for further hearing upon the subjects set forth in the aforesaid petitions.

273 7. On May 11, 1932, and prior to the issuance of the order of May 18, 1932, and the filing of said petitions, each and every of the petitioning market agencies filed with the Secretary, to become effective May 23, 1932, a schedule showing, either expressly or by reference, all rates and charges for the stockyard services furnished by such market agencies at the Kansas City stockyard, Kansas City, Missouri, each of which schedules has, for convenience, been designated "Kansas City Livestock Exchange Tariff No. 3." Tariff No. 3 remained in effect until November 1, 1937, when a petition of the respondents to the Secretary to modify his order of June 14, 1933, was granted. By stipulation at this time a new schedule of rates was accepted by the Secretary for filing.

8. In view of the decision of the Supreme Court of the United States in the case of Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248, and of the District Court of the United States for the Western District of Missouri in the case of St. Joseph Stockyards Company v. The United States, 58 Fed. (2d) 290, the Secretary was of the opinion that it was his duty under the law to reopen this docket and hold a rehearing, to the end that all parties in interest might be given opportunity to present such evidence of changes, both general and particular, as have occurred since the year 1929 and are material to the issues raised by the order of inquiry herein, and also to the end that all parties might have opportunity to present such other things as might be material to said issues; and further, to the end that a general inquiry might be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge, stated in said new schedules known as Kansas City Livestock Exchange Tariff No. 3 and in the new schedules filed by the Farmers Union Livestock Commission and the Producers Commission Association, respectively, on June 10, 1932, and in any and all schedules of market agencies in effect at said Kansas City stockyard at the time of the rehearing ordered by the Secretary. Accordingly, the Secretary, by an order dated July 15, 1932, vacated the aforesaid order of May 18, 1932, and directed a rehearing for the purposes aforesaid.

9. The rehearing ordered as above stated was held at the Kansas City Athletic Club Building, in Kansas City, Missouri, by adjournment from the Federal Building in said city. The hearing began on the 6th day of October and was concluded on November 16, 1932.

10. By the order of July 15, 1932, granting a rehearing herein, the following additional parties were made respondents in the

cause: Ralph W. Wright and Wm. N. Baucus, partners, doing business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson, and Chas. G. Smith, partners, doing business as John Clay and Company; L. E. Tice, doing business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, partners, doing business as Laird Bros. Livestock Commission Company; Walter G. Land and John E. Maze, partners, doing business as Walter G. Land Livestock Commission Company; Charles F. Vieregg and Robert
274 H. Stover, partners, doing business as W. M. Leitch Sheep Commission Company; A. E. Long, Robert B. Perry, and B. W. Perry, partners, doing business as Long-Perry Livestock Commission Company; Martin, Blomquist & Lee Commission Company, a corporation; Grover C. Maxwell and Ben J. Furnish, partners, doing business as Maxwell & Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz, and Louise McGrew Moffett, a partnership, doing business as the Moffett Livestock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, partners, doing business as the Ragland, Storts and Burrus Livestock Commission Company; Lawrence Feaman and J. M. Nolan, partners, doing business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a corporation; J. Less White and O. C. Seamans, a partnership, doing business as the Less White & Seamans Livestock Commission Company; R. W. Wester and Joseph P. Smith, partners, doing business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, partners, doing business as Graybill and Stephenson; Great Western Order Buying Company, a corporation; Dave Hamer, doing business as Dave Hamer Livestock Commission Company; and Harry Conley, W. H. Cripe, and J. Ed Freed.

11. At the time of the rehearing in this cause above described, the following respondents were not engaged in business at the Kansas City stockyards: L. B. Andrews, doing business as L. B. Andrews Livestock Commission Company; A. B. Bachman, doing business as A. B. Bachman Livestock Commission Company; Charles N. Bird; Charles E. Blount, doing business as Charles E. Blount & Company; Gillespie & Jones Livestock Commission Company; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership, doing business as Goodson-Green Company; W. E. Burrus, doing business as Interstate Livestock Commission Company; S. Kraus; L. Levy; H. B. Dorsett, doing business as M. K. & T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Livestock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; George P. Robinson

and Joe R. Hoover, a partnership, doing business as Robinson-Hoover Commission Company; F. W. Banks and C. A. Rountree, a partnership, doing business as Rountree-Banks; E. F. Searls, doing business as George W. Searls & Son; Curtis A. Wood; W. E. Woodford, doing business as W. E. Woodford Livestock Commission Company; and Ralph W. Wright.

12. By reason of changes in their organization, the following respondents had, at the time of the rehearing herein, ceased to engage in business at the Kansas City Stock Yards under the firm name and style under which they were named as parties respondent in this proceeding: W. N. Baucus and Ira Kimmons, a partnership, doing business as Baucus & Company; John Clay, F. H. Connor, C. A. Kleman, and J. G. Forrest, a partnership, doing business as John Clay & Company; E. L. Knight and E. Tice, a partnership, doing business as Knight & Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership, doing business as Laird Bros. Livestock Commission Company; Walter G. Land, doing business as Walter G. Land Livestock Commission Company; W. M. Leitch Sheep Commission Company; A. E. Long and Robert B. Perry, a partnership, doing business as Long-Perry Livestock Commis-
275 sion Company; Martin Bros. & Lee Livestock Commission Company; Grover C. Maxwell, doing business as the Grover C. Maxwell Commission Company; T. S. Moffett, H. M. Baker, and J. M. McLain, a partnership, doing business as Moffett Livestock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, a partnership, doing business as Ragland, Storts & Burrus; William M. Schwartz, Joseph M. Nolan, and Lawrence Feaman, Jr., a partnership, doing business as Schwartz-Feaman-Nolan Company; C. A. Stuart, doing business as C. A. Stuart & Company; J. Less White, doing business as Less White Livestock Commission Company; and Dan Wester, R. W. Wester, and Joseph Smith, a partnership, doing business as Wester Bros. & Smith Commission Company. Frank Boddington, doing business as Frank Boddington Livestock Commission Company, a respondent in this proceeding, died on October 14, 1932.

13. It appears of record that at the rehearing described in paragraph 9 hereof, all respondents were present by counsel except Farmers Union Livestock Commission; J. G. Jackson; McDonald Livestock Commission Company; W. O. Park; K. L. Peterson, doing business as K. L. Peterson Order Buying Company; Producers Commission Association; M. W. Rice and George E. Kirk, a partnership, doing business as Rice & Kirk; Harry Conley, W. H. Cripe, and J. Ed Freed.

14. It also appears of record that Farmers Union Livestock Commission; McDonald Livestock Commission Company; K. L. Peterson, doing business as K. L. Peterson & Company; Producers Commission Association; Harry Conley; and W. H. Cripe were duly served with a copy of the aforesaid order granting a rehearing in this cause. It does not appear of record that either J. G. Jackson; W. O. Park; M. W. Rice and George E. Kirk, a partnership, doing business as Rice & Kirk; J. Ed Freed, or any of them, were either present at the rehearing, in person or by counsel, or were served with a copy of the order granting rehearing herein. However, it does appear that John B. Gage, Esq., Attorney at Law, of Kansas City, Missouri, who appeared for most of the respondents, both at the original hearing and at the rehearing, announced at the original hearing that he represented M. W. Rice and George E. Kirk, a partnership, doing business as Rice & Kirk; and there is nothing in the record of the rehearing to negative the continuance of such representation except that said record fails to show the inclusion of these respondents in the list of those stated by Mr. Gage as being represented by him.

15. Oral argument on the basis of the record made at the original hearing and at the rehearing was had before the Acting Secretary of Agriculture on March 24, 1933. Respondents' counsel was given until April 15, 1933, to file a brief, and so filed it.

15–a. On June 14, 1933, the Secretary of Agriculture, upon the basis of the record, found that the respondents' schedule of rates and charges under investigation contained rates and charges which were unreasonable and unjustly discriminatory. At the same time, he prescribed as reasonable and nondiscriminatory rates not in excess of those set out in the order of June 14, 1933.

Suits were filed in the United States District Court for
276 the Western District of Missouri by certain of the respondents attacking the validity of the rate order of the Secretary and asking an injunction against its enforcement. The two respondent cooperative market agencies did not file suit, but put into effect the schedule of rates prescribed in the order of the Secretary. The Court granted a temporary restraining order, in which it directed that the market agencies should impound with the Court weekly, "pending final disposition of this cause," an amount of money equal to the difference between the revenues producible by the application of Tariff No. 3, under investigation, and the revenues producible by the tariff prescribed as reasonable by the Secretary in his order of June 14, 1933.

15–b. On October 29, 1934, the District Court rendered its opinion and entered its Findings of Fact and Conclusions of Law, in which it upheld the order of the Secretary of June 14, 1933, rejected all the contentions of the complainants, and adopted as its own the Findings of Fact made by the Secretary. The complainants appealed the case to the Supreme Court of the United States, which, on April 25, 1938, held that the Secretary's order was defective because the market agencies were not fairly advised of what the Government proposed to do and were not given opportunity to be heard upon the Government's proposals. The court did not pass upon the merits of the case. In the light of this situation, the Secretary of Agriculture, on the 2d day of June 1938, reopened this proceeding and ordered that the Proceedings, Findings of Fact, Conclusions, and Order as issued by him on June 14, 1933, be served upon the respondents as a tentative Findings of Fact, Conclusion, and Order of the Secretary in this proceeding, and on August 26, 1938, ordered the taking of "such additional relevant and material evidence as the parties in this proceeding may desire to offer with respect to conditions subsequent to June 14, 1933." He further ordered "that before the taking of such evidence the examiner shall hear the parties with respect to the exceptions filed by them to the tentative findings of fact served in accordance with the order of the Secretary of June 2, 1938" (see order of August 26, 1938). The respondents were given thirty (30) days within which to file exceptions to the tentative Findings of Fact, Conclusions, and Order and within which to make appropriate motions or objections with respect to the reopened proceeding. Through their attorneys, Frederick H. Wood, Esq., and John B. Gage, Esq., the Burlington Livestock Commission Company; Cassidy Southwestern Commission Company; Crider Brothers Commission Company; Warren Cummings, doing business as Warren Cummings Livestock Commission Company; Charles Dixon Commission Company; Ehrke-Martin Livestock Commission Company; E. W. Elliott and R. K. Swain, a partnership, doing business as Elliott, Swain & Company; Farrar, Davis & Campbell Livestock Commission Company; W. G. Gladish, doing business as Gladish Livestock Commission Company; O. C. Haggart; John H. Wilson, and Glenn Haggart, a partnership, doing business as Haggart, Wilson Livestock Commission Company; Inman-Hutton Livestock Commission Company; W. C. Kile, doing business as W. C. Kile Livestock Commismission Company; R. H. Lewis, doing business as Lewis Livestock Commission Company; W. M. Liggett, doing business as Kansas City Livestock Commission Company; National Livestock Commission Company; John M. Nichols, doing business as
277 John M. Nichols Livestock Commission Company; Bryant

Poole, D. L. Dempsey, and James Rutherford, a partnership, doing business as Poole-Dempsey-Rutherford Livestock Commission Company; Ryan-Robinson Livestock Commission Company; The Stagner, Pieronnet & Willis Livestock Commission Company; Swift & Henry Livestock Commission Company; C. A. Stuart, doing business as Stuart-Robinson Livestock Commission Company; L. Knop, Henry F. Thies, E. J. Thies, F. W. Thies, and A. C. Thies, a partnership, doing business as H. Thies & Sons; Wilson, Egan & Company; Witherspoon Livestock Commission Company; Ralph W. Wright and Wm. N. Baucus, partners, doing business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson, and Chas. G. Smith, partners, doing business as John Clay and Company; L. E. Tice, doing business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, partners, doing business as Laird Bros. Livestock Commission Company; Charles F. Vieregg and Robert H. Stover, partners, doing business as W. M. Leitch Sheep Commission Company; Martin, Blomquist & Lee Commission Company; Grover C. Maxwell and Ben J. Furnish, partners, doing business as Maxwell and Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz, and Louise McGrew Moffett, a partnership, doing business as the Moffett Livestock Commission Company; and R. W. Wester and Joseph P. Smith, partners, doing business as Wester Bros. & Smith Commission Company, filed general exceptions and one hundred and one (101) specific exceptions to the tentative findings. Later the same attorneys, representing the above-named respondents, filed additional objections to the procedure and rulings of the Examiner in the former proceedings. On August 13, 1938, the New Amsterdam Casualty Company, through its attorneys, Morrison, Nugent, Berger, Byers and Johns, filed a motion urging that the tentative order of the Secretary of Agriculture dated June 2, 1938, be dismissed, quashed, and vacated, on the ground that Harry J. Kennaley, a respondent, formerly doing business as Harry Kennaley Commission Company, had assigned and transferred to the New Amsterdam Casualty Company of Baltimore, Maryland, all his rights growing out of the litigation relative to the order of the Secretary of June 14, 1933.

15–c. On August 26, 1938, the Secretary of Agriculture denied the motions to vacate the "Order Reopening Proceeding." On the same date he designated an Examiner for the purpose of allowing all parties opportunity to submit the evidence referred to in paragraph 15–b and for the purpose of hearing the respondents with respect to exceptions filed by them to the tentative Findings of Fact served in accordance with the order of the Secretary of

June 2, 1938. He directed the Examiner to prepare and submit to the parties a report based upon the entire record. The hearing was begun in Washington, D. C., on September 12, 1938. The Examiner took testimony and heard argument with respect to the rulings of the Examiner made during the previous hearing. He also heard argument on the exceptions filed by certain respondents named by their attorney, John B. Gage, Esq., to the order of the Secretary issued June 2, 1938. On October 3, 1938, the hearing reconvened in Kansas City, Missouri, for the purpose of giving
278 those of the respondents not represented by counsel an opportunity of being heard. None of the respondents not represented by counsel entered an appearance. The hearing before the Examiner adjourned on October 3, 1938.

15-d. On October 31, 1938, the Examiner notified all parties that Government counsel had informed him that Government counsel did not desire an opportunity to introduce further evidence in the case. On this date the Examiner closed the case and notified all parties of his action in so doing. At the same time he asked counsel to collaborate in preparing proposed findings, conclusions, and order. Each counsel was given twenty-one (21) days within which to submit his recommendations. On November 4, 1938, the time for filing was extended to December 12, 1938. At the request of counsel for the respondents, the date was further extended to December 20, 1938. Later, an extension was made to December 27, 1938. On this date counsel for the Government filed proposed Findings of Fact and proposed Order with the Examiner. At the same time counsel for the respondents filed a memorandum supplementary to the proposed Findings, Conclusions, and Order incorporated in the brief filed with the Examiner at the hearing begun in Washington, D. C., on September 12, 1938.

15-dd. On January 17, 1939, the Examiner filed a report with the Secretary of Agriculture in accordance with the instructions given in the Secretary's order of August 26, 1938, a copy of which was served upon counsel for the Government, upon counsel for such of the respondents as were represented by counsel, and upon those respondents individually, or their legal representatives, who were not represented by counsel. On February 15, 1939, counsel for respondents moved to suppress the Report and Recommendations of the Examiner. On March 4, 1939, the Secretary denied the motion. The attorney for the Government filed eight exceptions to the Examiner's Report and Recommendations. The attorney for the respondents filed seven general and eighty

special exceptions. The attorney for respondents requested also fifteen findings addressed to the Report and Recommendations. Counsel for the respondents grouped the special exceptions under the following headings:

I. Proposed findings upon the evidence presented prior to June 2, 1938. (Special exceptions 1 to 9.)

II. Proposed findings upon the evidence presented subsequent to June 2, 1938. (Special exceptions 10 and 11.)

III. Proposed findings of fact and conclusions offered in substitution for findings 131 to 180 of the Examiner's Report and Recommendations. (Special exceptions 12 to 80.)

279 On March 29, 1939, argument on the exceptions to the Examiner's report was heard by the Secretary, two hours being allowed to counsel for respondents and two hours to counsel for the Government. Stenographic notes of the argument were made. No argument was made by those of respondents not represented by counsel. Counsel for the respondents asked permission to make certain changes in the stenographic report of the argument. He was given this permission and suggested changes on twenty-eight pages thereof. The changes suggested by him were made. New pages were substituted and the removed pages preserved in the ribbon copy of the argument. The attorney for the Government asked permission to make two changes. These were made and the old pages were preserved in the ribbon copy. On March 31, 1939, counsel for the respondents addressed a letter to the Secretary relative to Exhibit No. C of the respondents' brief in the Supreme Court, October Term, 1937, which brief is a part of the record now before the Secretary. On April 4, 1939, counsel for the Government addressed a letter to the Secretary concerning the point at issue with respect to this exhibit. These two letters have been given the same consideration as if the statements made in them had been made during the course of the argument. Careful consideration has been given to the exceptions filed by counsel for both parties and to the arguments made thereon. Certain ones of the exceptions were well taken, and their content is reflected in the findings hereinafter made. Others of them were without merit and have been given no weight in the determinations made and set forth herein.

15-e. In the first hearing 65 witnesses were examined, 6,722 pages of testimony were taken, and 140 exhibits were introduced. In the second hearing 45 witnesses were examined, 3,091 pages of testimony were taken, and 187 exhibits were introduced. In the third hearing 6 witnesses were examined, and 16 exhibits were

introduced. The argument and testimony cover 831 pages of transcript. At the outset of the third hearing, counsel for those respondents represented by counsel, and heretofore named, moved to strike from the record the tentative Findings of Fact, Conclusions, and Order (1) on the ground that the record and evidence upon which the tentative order is based was stale; (2) because the Findings, Conclusions, and Order were not made in accordance with the rules of practice promulgated by the Secretary of Agriculture; (3) because counsel for the respondents claimed that the findings were condemned by two judges who sat in the three-judge court (3T, 15). Counsel for the Government objected to the introduction of any evidence relating to conditions subsequent to June 14, 1933, on the ground that facts and conditions subsequent to that date were immaterial to any issues in the proceedings (3T, 500). The Examiner overruled these motions of both counsel (3T, 29; 3T, 500). The Examiner's rulings on these motions are sustained. Consideration has been given to the entire record in this proceeding. The facts of record showing the conditions prior to June 14, 1933, and the facts subsequent to that date have been analyzed and weighed.

280 FINDINGS OF FACT

Upon careful consideration of the entire record in this proceeding, the following findings of fact and conclusions are made:

## I. The Kansas City Livestock Market

16. The Kansas City Stock Yards Company maintains and operates a stockyard at Kansas City, Missouri, at which a public market is conducted. This market was established in 1871, and has grown in importance as the production of livestock has expanded and improved in the territory tributary to Kansas City, until it has become one of the leading livestock markets in the United States. A stockyard is a place where producers and others ship their livestock by rail or by truck, or drive them in on foot, to be offered for sale to the various classes of buyers who resort there to buy those grades and classes of livestock which meet their requirements. The stockyard at Kansas City, Missouri, which is operated by the Kansas City Stock Yards Company, has been ascertained by the Secretary of Agriculture to be a "stockyard" as defined in Title III of the Packers and Stockyards Act, and notice thereof has been given to the owners and to the public, as required by the Act.

17. The geographical location of the Kansas City market makes it a gateway through which much of the livestock produced in the West and Southwest passes on its way to the feed lots in the Central West and the consuming centers in the East. Considerable numbers of hogs and sheep are sold at the Kansas City market, but it is primarily a cattle market. It is the largest stocker and feeder cattle market in the world.

## II. Origin of Receipts of Livestock

18. The points of origin of receipts of cattle at the Kansas City market lie principally in the States of Kansas, Nebraska, Colorado, Arizona, New Mexico, Texas, Oklahoma, Arkansas, Missouri, and Idaho. The territory in which the drawing power of the Kansas City market is distinctly greater than that of its principal competing central markets is made up of the State of Kansas, the most southerly tier of counties in Nebraska, the counties of southeastern Colorado, those of the eastern half of New Mexico, those of the northern portion of Texas, the State of Oklahoma, the counties of western Arkansas, and those of the most westerly portions of Missouri. The hogs arriving at the Kansas City market originate in a more restricted area than do the cattle and sheep. The hog territory may be defined generally as the State of Kansas, south central Nebraska, northern Texas, eastern Oklahoma, western Arkansas, and the counties located in the western third of Missouri. The sheep arriving at the Kansas City market originate in a wide area, embracing the States of Kansas, Colorado, New Mexico, Arizona, Texas, Oklahoma, Missouri, and to some extent the far western and northwestern States.

281 19. Ordinarily, livestock tends to move from the producer to the consumer by that route which is most economical. The trade territory of a market is determined largely by those factors which make it the most economical center to, through, and from which to move the livestock. One of the chief factors delimiting the trade territory of a market is the rate structure of the railroad transportation system which serves it. Generally speaking, there is a normal trade territory for a livestock market, and this is true of the Kansas City market. Within this trade territory, the Kansas City market comes into competition, to a varying extent, with other markets for the livestock in the counties and States from which it receives its livestock.

20. The following table gives, by species, the total number of livestock marketed from the seven States of Kansas, Texas, Okla-

homa, Missouri, Nebraska, Colorado, and New Mexico, at Kansas City and four of its principal competing central markets, and the percentage of the total marketed at each:

CATTLE

| Year | Number marketed at 5 markets | Percent marketed at Kansas City | Percent marketed at Chicago | Percent marketed at Nat. Stkyds. | Percent marketed at Omaha | Percent marketed at St. Joseph |
|---|---|---|---|---|---|---|
| 1920 | 4,864,922 | 49.5 | 3.0 | 14.5 | 21.4 | 11.6 |
| 1921 | 4,889,076 | 49.9 | 4.3 | 14.8 | 20.6 | 10.4 |
| 1922 | 5,303,333 | 50.4 | 3.7 | 13.9 | 21.4 | 10.6 |
| 1923 | 6,173,478 | 51.2 | 3.9 | 14.3 | 19.9 | 10.7 |
| 1924 | 6,202,311 | 48.4 | 5.0 | 14.3 | 21.3 | 11.0 |
| 1925 | 5,954,228 | 49.1 | 4.5 | 14.5 | 20.3 | 11.6 |
| 1926 | 5,778,123 | 44.7 | 5.2 | 16.5 | 22.6 | 11.0 |
| 1927 | 4,990,586 | 46.6 | 4.8 | 15.6 | 19.8 | 10.2 |
| 1928 | 4,841,510 | 44.9 | 5.7 | 15.5 | 22.3 | 11.6 |
| 1929 | 4,834,490 | 44.4 | 5.7 | 15.8 | 22.6 | 11.5 |
| 1930 | 4,868,804 | 44.0 | 4.9 | 16.3 | 23.9 | 10.9 |
| 1931 | 4,774,019 | 40.7 | 6.7 | 16.8 | 25.7 | 10.1 |

HOGS

| | | | | | | |
|---|---|---|---|---|---|---|
| 1920 | 7,030,618 | 32.1 | 0.8 | 18.9 | 27.4 | 20.8 |
| 1921 | 7,253,311 | 28.6 | 1.0 | 22.3 | 27.9 | 20.2 |
| 1922 | 8,413,567 | 28.8 | 1.6 | 23.0 | 26.3 | 20.3 |
| 1923 | 10,843,476 | 30.3 | 1.2 | 24.0 | 26.0 | 18.5 |
| 1924 | 10,400,432 | 26.3 | 0.9 | 24.0 | 29.9 | 18.9 |
| 1925 | 7,968,149 | 34.6 | 0.9 | 24.1 | 32.2 | 18.2 |
| 1926 | 6,980,344 | 27.6 | 0.7 | 25.8 | 28.2 | 17.7 |
| 1927 | 5,897,608 | 29.4 | 1.8 | 32.5 | 23.1 | 14.2 |
| 1928 | 8,302,044 | 29.1 | 1.1 | 24.8 | 27.6 | 18.4 |
| 1929 | 8,726,396 | 27.8 | 1.1 | 26.3 | 28.0 | 16.8 |
| 1930 | 7,995,230 | 34.9 | 0.8 | 25.6 | 32.1 | 16.6 |
| 1931 | 6,582,778 | 19.4 | 0.8 | 23.1 | 30.0 | 18.7 |

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SHEEP

| | | | | | | |
|---|---|---|---|---|---|---|
| 1920 | 3,060,016 | 47.9 | 14.7 | 12.3 | 7.6 | 17.5 |
| 1921 | 3,715,856 | 42.3 | 22.1 | 12.2 | 7.1 | 16.3 |
| 1922 | 3,327,947 | 43.6 | 20.7 | 13.4 | 6.7 | 15.6 |
| 1923 | 3,743,367 | 38.7 | 21.3 | 10.3 | 11.1 | 18.1 |
| 1924 | 3,454,973 | 41.5 | 17.6 | 9.6 | 9.2 | 22.1 |
| 1925 | 3,355,277 | 40.0 | 18.3 | 10.4 | 11.2 | 23.1 |
| 1926 | 3,676,427 | 43.2 | 14.3 | 11.2 | 9.6 | 21.7 |
| 1927 | 3,088,669 | 43.0 | 16.6 | 11.1 | 8.1 | 21.2 |
| 1928 | 3,736,678 | 42.6 | 10.2 | 8.2 | 10.8 | 28.2 |
| 1929 | 3,739,764 | 42.7 | 8.2 | 9.2 | 11.0 | 28.9 |
| 1930 | 4,301,577 | 42.8 | 11.2 | 8.7 | 12.6 | 24.7 |
| 1931 | 4,540,010 | 45.8 | 11.8 | 10.1 | 9.6 | 22.7 |

20-a. The record does not show, for any year subsequent to 1931, a comparison of receipts at the Kansas City market with those at its principal competitors, from the seven States enumerated in paragraph 20. It does show, however, the total receipts of the thirty-eight firms in business in 1931 and still in business in 1937. The total receipts, by species, of these thirty-eight firms for the years 1931 and 1937 are as follows:

| | 1931 | 1937 |
|---|---|---|
| Cattle and calves | 2,031,482 | 1,854,938 |
| Hogs | 790,692 | 363,508 |
| Sheep | 1,516,024 | 1,170,381 |

(See Respondents' Exhibit A–14.)

21. Counsel for those of the respondents represented by counsel object to paragraph 21 of the tentative order of June 2, 1938, on the ground that the statistical information in this paragraph is stale and without probative value. The respondents not represented by counsel have made no such exception. The information contained in this paragraph of the tentative order relates to receipts by rail in the year 1927 from market zones as determined by county lines. The exception of counsel is well taken, and the figures contained in paragraph 21 of the tentative order have been given no weight.

22. Paragraph 22 of the tentative order of June 2, 1938, deals with the same general subject matter as does paragraph 21 of that order. No consideration has been given to the information contained therein.

283 III. Manner of Arrival of Livestock at Market

23. Presently practically all livestock handled by the respondents arrives at the Kansas City stockyard either in railroad cars or motortrucks.

24. Until comparatively recent years, arrivals of livestock were practically exclusively by rail. Formerly it was the custom of one owner to load one species in one or more railroad cars and consign such livestock to a market agency for sale. Under these conditions of transportation and ownership, the consignment came to be thought of in terms of the straight car with single ownership, and the rates were assessed in terms of cars. Multiple car consignments containing livestock of one species and ownership were formerly more common than at present. Consignments in train loads of fifteen or more cars were not infrequent. Due to the more intensive settlement of the livestock-producing territory tributary to Kansas City, and due to transportation and marketing conditions, the number of straight cars of single ownership has declined. The number of cars mixed as to species and ownership has increased. The structure of the tariffs consequently was changed so as to assess per-head rates on consignments of livestock arriving in less than car lots, whether the consignments arrived by rail or by truck.

25. Not all of the cars used by the thirteen railroads serving the Kansas City market are of the same length or same weight capacity. Some of the roads use 36-foot cars; others, 40-foot cars. The custom has grown up on the part of those railroads using mainly 36-foot cars of furnishing two such cars when a 40-foot car is ordered by a shipper, and billing the two cars as one. The respondent market agencies assess their charges according to the billing. Some of the roads, in order to meet truck competition, have reduced the minimum weight allowable and have reduced their carload rates accordingly.

26. With the development of the motortruck and the construction of hard-surfaced and other improved roads leading from the producing areas to Kansas City, there came another change in the manner of arrival of livestock at the market; namely, the gradual decrease in the percentage thereof arriving by rail and a corresponding increase in that coming in by truck. The record shows these percentages for each year from 1922 to 1937. It will be observed from the following table that in 1922 only .95 percent of cattle, 5.58 percent of calves, 5.49 percent of hogs, and 7.11 percent of sheep arrived by truck, while in 1931 the corresponding percentages were: cattle, 11.15 percent; calves, 35.16 percent; hogs, 51.55 percent; and sheep, 13.39 percent.

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| Year | Cattle | | Calves | |
|---|---|---|---|---|
| | Rail (percent of total) | Truck (percent of total) | Rail (percent of total) | Truck (percent of total) |
| 1931 | 88.85 | 11.15 | 64.84 | 35.16 |
| 1930 | 92.19 | 7.81 | 72.99 | 27.01 |
| 1929 | 94.59 | 5.41 | 78.21 | 21.79 |
| 1928 | 96.62 | 3.38 | 82.40 | 17.60 |
| 1927 | 97.64 | 2.36 | 84.88 | 15.12 |
| 1926 | 98.16 | 1.84 | 86.34 | 13.66 |
| 1925 | 98.56 | 1.44 | 90.34 | 9.66 |
| 1924 | 98.93 | 1.07 | 92.84 | 7.16 |
| 1923 | 99.09 | .91 | 93.65 | 6.35 |
| 1922 | 99.05 | .95 | 94.42 | 5.58 |

| Year | Hogs | | Sheep | |
|---|---|---|---|---|
| | Rail (percent of total) | Truck (percent of total) | Rail (percent of total) | Truck (percent of total) |
| 1931 | 48.45 | 51.55 | 86.61 | 13.39 |
| 1930 | 60.78 | 39.22 | 88.83 | 11.17 |
| 1929 | 71.37 | 28.63 | 89.71 | 10.29 |
| 1928 | 78.00 | 22.00 | 91.99 | 8.01 |
| 1927 | 83.92 | 16.08 | 91.74 | 8.26 |
| 1926 | 88.45 | 11.55 | 91.75 | 8.25 |
| 1925 | 91.12 | 8.88 | 94.46 | 5.54 |
| 1924 | 93.28 | 6.72 | 94.74 | 5.26 |
| 1923 | 95.42 | 4.58 | 94.13 | 5.87 |
| 1922 | 94.51 | 5.49 | 92.89 | 7.11 |

The above-stated percentages are calculated from the total receipts of livestock by rail and by truck, respectively, as compiled by the Kansas City Stock Yards Company. These totals contain livestock such as that stopped at Kansas City for feed, water, and rest, and that shipped direct to packers through the Kansas City stockyard, neither of which classes is handled by any of the respondents. The record shows the arrivals by rail and by truck, respectively, of the livestock handled by the respondents for only the years 1929 and 1931. The following table shows the percentages arriving by rail and by truck, respectively, of the total fresh revenue-producing receipts of livestock handled by the respondents. By "total fresh revenue-producing receipts" is meant the total livestock on which the respondents handled for dealers, and livestock handled for other market agencies.

| Year | Cattle | | Calves | |
|---|---|---|---|---|
| | Rail (percent of total) | Truck (percent of total) | Rail (percent of total) | Truck (percent of total) |
| 1929 | 94.21 | 5.79 | 74.71 | 25.29 |
| 1931 | 88.43 | 11.57 | 58.21 | 41.79 |
| | Hogs | | Sheep | |
| 1929 | 67.25 | 32.75 | 90.77 | 9.23 |
| 1931 | 38.49 | 61.51 | 86.60 | 13.40 |



27. Comparison of the above percentages for the years 1929 and 1931 with those contained in the next preceding table indicates that a greater proportion of the livestock handled by the respondents arrives by motor truck than is true of the total livestock which passes through the stockyard. The respondents' tariffs have contained for many years per-head rates for selling livestock trucked or driven into the stockyard. Quite uniformly, these rates have exceeded those charged per head for livestock arriving by other modes of transportation.

27-a. The following table shows the ratio, on a percentage basis, of rail receipts to total receipts and truck receipts to total receipts of cattle, calves, hogs, and sheep for the years 1932 to 1937, inclusive. The figures in this table are comparable to those set forth at the beginning of paragraph 26.

| Year | Cattle | | Calves | |
|---|---|---|---|---|
| | Rail (percent of total) | Truck (percent of total) | Rail (percent of total) | Truck (percent of total) |
| 1932 | 81.28 | 18.72 | 61.54 | 38.46 |
| 1932 | 70.11 | 29.89 | 53.57 | 46.43 |
| 1934 | 75.92 | 24.08 | 68.08 | 31.92 |
| 1935 | 67.65 | 32.35 | 47.10 | 52.90 |
| 1936 | 62.96 | 37.04 | 43.57 | 56.43 |
| 1937 | 72.37 | 27.63 | 56.01 | 43.99 |
| | Hogs | | Sheep | |
| 1932 | 37.40 | 62.60 | 82.60 | 17.40 |
| 1933 | 30.82 | 69.18 | 79.55 | 20.45 |
| 1934 | 25.71 | 74.29 | 80.00 | 20.00 |
| 1935 | 21.41 | 78.59 | 77.50 | 22.50 |
| 1936 | 26.56 | 73.44 | 73.95 | 26.05 |
| 1937 | 10.47 | 89.53 | 79.23 | 20.77 |

(See Respondents' Exhibit A–1, pp. 25, 26, 27, 28.)

28. Changing modes of arrival and other factors, such as market demand and the customs of buyers, have caused the number of animals per consignment and per draft to decrease. Increasingly, respondents' business has taken on more of the aspects of the retail handling of a commodity. These changes have brought with them increasing costs per head of livestock handled. Such costs are included in those hereinafter stated in detail.

286 29. The foregoing developments caused the great majority of the respondents to reach the conclusion that tariff structures, based on the carload as the unit, had ceased to fit their businesses. Accordingly, between the time of the first and the second hearing in this proceeding, the respondents filed their Tariff No. 3. To a considerable extent, this tariff discards the carload as the unit of charge and assesses rates on the number of head of livestock in each consignment of a particular species, regardless of the mode by which such livestock arrives at the pens of the respondents.

29–a. The schedule of rates hereinafter prescribed as reasonable and nondiscriminatory gives recognition to the changing method of arrival of livestock. The schedule, based as it is upon a charge varying with the number of head of a species in a consignment, automatically produces an increasing per-head revenue as the number of head in a consignment decreases.

## IV. The Facilities of the Market Place

30. The Kansas City Stock Yards is located in Missouri and Kansas, in that part of the central industrial district of Kansas City known as the "West Bottoms." The yard is divided into

three sections: The west yard lies on the west side of Kansas River and was formerly used as a quarantine yard; the main yard lies on the east side of the Kansas River and includes the cattle, hog, sheep, and horse and mule divisions, in addition to the exchange and show buildings; the north yard lies north of the main yard and is connected with it by an underpass beneath the Union Pacific and Missouri Pacific railroad tracks. With rare exceptions, the buying and selling of livestock are carried on in the main yard.

31. The Kansas City market is served by thirteen trunk-line railroads and by the Kansas City Connecting Railroad, which owns rights-of-way, tracks, and loading and unloading docks and chutes. These railroads afford adequate transportation facilities in connection with the loading and unloading, receiving and delivering of livestock at the stockyard. The terminal carrier forms the connection between the stockyard and all railroads entering Kansas City.

32. The main yard is generally triangular in shape, the base of the triangle being at the north end of the yard. There are five railroad docks on the west side of the main yard, extending in a north and south direction. Three of these docks lie between the river and the hog house, and two lie between the hog house and the cattle division. These five docks have approximately five hundred unloading chutes.

33. The hog house is a three-story structure, rectangular in shape, extending in a north and south direction between the two sets of railroad docks. The respondent commission firms use the pens on the second floor of the hog house for selling
287 hogs. The ground floor is used for holding cattle which are not delivered to the respondent firms immediately upon arrival, and for holding livestock which is to be shipped out of the yard. Those respondents who are engaged solely in the business of buying hogs on order use a part of the third floor of the hog house for sorting and preparing livestock for shipment. The remainder of the third floor is used for holding livestock to be delivered to packers. A part of the roof of the hog house is covered with pens and used for the same purpose. The unloading docks and receiving pens for hogs arriving by truck are located in the north yard. Hogs unloaded there must be driven through the underpass which connects with the main yard at the north end of the hog house.

34. The cattle division lies between railroad dock No. 5 and the public thoroughfare which bounds the yard on the east. This division is not under roof and is on the ground floor. However, the scales are on viaducts, with the exception of two cattle scales

which are on the surface in the traders' division. The pens and alleys in the north and, to some extent, the west part of this division are used by traders who buy and sell the different classes of cattle and calves. The commission division of the cattle yard is rectangular in shape, extending in a north and south direction, adjoining part of dock No. 5 and part of the traders' division on the west. The respondent firms have pens assigned to them in this division, in which cattle and calves are exposed for sale. There are unloading docks and receiving pens at the north end of the main yard where cattle and calves are received from trucks and later driven to the commission division.

35. The sheep barns are located in the southern part of the main yard. There are three of these barns, each being a one-story structure. The unloading docks for drive-in sheep, and the sheep dipping vat are located in this division.

36. The plant and pens used in connection with the immunization of hogs are situated in the southwest corner of the cattle division. The dipping vat and branding chutes for cattle and calves are located in the north yard. There is also a stock hog division in the north yard where stock hogs may be handled without the necessity of dipping and immunizing, if they are not brought into the main yard. This division is for the purpose of encouraging the movement of stocker and feeder hogs through the public market. If such hogs are taken to the main yard to be sold or weighed, they must be dipped and immunized in accordance with State and Federal regulations.

37. The Kansas City Stock Yards Company owns an office building, commonly called the Exchange Building, which is located midway on the east side of the cattle commission division. In addition to housing its own offices in this building, the company leases office space to the respondents and others having business at the market. Opposite the Exchange Building
288 and on the west side of this division is the train office building, where the records of incoming and outgoing shipments are made. It is a sort of clearing house for the detailed information relative to the movement of livestock to and from the market.

38. Livestock arriving at the Kansas City market by rail is unloaded by employees of the stockyard company, which acts as agent for the carriers who pay the company for this service. The loading and unloading facilities of the Kansas City Connecting Railroad are connected with an extensive system of viaducts, alleys, stock drives, subways, and bridges, which afford adequate facilities for receiving and distributing livestock to all parts of the stockyard.

39. In each division of the yard, adequate scale facilities are provided by the stockyard company. There are three scales in the sheep division, one of which is designed for weighing truck consignments. There are fourteen scales in the cattle commission division. These scales, the sorting and catch pens, and alleys used in connection therewith are elevated above the pens and alleys on the ground level. They are reached by inclines and viaducts. These scales are arranged in pairs, one scale in each pair being called the "high line" scale and used for weighing drafts of ten head or more, and the other the "jack pot" scale and used for weighing small drafts. At the west side of the cattle yard, there is a small scale maintained for the purpose of weighing crippled hogs. There are five scales maintained in the hog commission division on the second floor of the hog house.

40. Upon the arrival of livestock by rail at the stockyard, a waybill representing each carload is delivered by an employee of the railroad company to employees of the stockyard company. Information as to the dock number, the time at which the train is set, names of consignor and consignee, the state of origin, car number, and class of livestock in the consignment is taken from the waybill and placed on the bulletin board by the stockyard company. These bulletins are hung in the lobby of the train office building, where they are consulted from time to time by representatives of the respondent firms for the purposes of ascertaining what livestock may have arrived consigned to them. After livestock is unloaded at the yard, the dock foreman, a stockyard employee, places a copy of the record of each car in a designated place in the chute alley, and representatives of commission firms consult these records to determine the location of livestock consigned to their respective firms.

41. Cattle and hogs arriving by rail are delivered to the respondent firms by the stockyard company at the unloading chutes. If their representatives are not at the unloading chutes to take delivery before the chute pens are needed for unloading other livestock, the stockyard company yards the livestock in convenient pens nearby. Under such circum-
289 stances, the hogs are usually taken to the pens on the second floor of the hog house, and cattle are yarded in pens on the ground floor of the hog house. The representatives of the respondents then call for the livestock at these divisions. Sheep arriving by rail are delivered to the respondents' pens in the sheep barns by the stockyard company. In the case of cattle and hogs arriving by truck, the respondents are required to drive the livestock to their own pens from the truck unloading chutes or nearby pens. Sheep arriving by truck are unloaded at a con-

venient place in the sheep division and are driven to the sale pens by the stockyard company.

42. The stockyard company tags all animals arriving crippled or dead, in order that they may be properly identified. There is an arrangement whereby a rendering company gathers up the dead animals and removes them to its plant, remittance therefor being made to the commission firms by the rendering company. Crippled hogs are gathered up by the stockyard company and delivered to a "crip" scale, where they are weighed and are then removed by the packers who purchase them. There are two associations which engage in the business of handling crippled cattle and sheep from the yards direct to the packing plants. Such crippled livestock is purchased on a salvage basis, and remittance is made to the commission firms to which the livestock is consigned. These associations make a special charge for this hauling service. This charge is deducted from the proceeds of the sale of the animals.

43. The stockyard company furnishes all the feed fed in the yards. It delivers the feed to the commissionmen's pens and feeds the livestock. Water and facilities for watering in each pen are also provided by the stockyard company. Employees of the respondent commission firms turn the water on. It frequently happens that the stockyard company will turn the water off. The stockyard company cleans the pens and maintains tractors, trailers, and other necessary facilities for removing debris. In seasons of bad weather, or on other occasions, the respondent firms may clean their own pens. Such cleaning consists in throwing the manure to one side of the pen or under the troughs. The employees of the stockyard company remove it later.

44. The stockyard company maintains weighmasters who operate the various scales and issue scale tickets containing information relative to each draft weighed. It also provides a man who assists in putting the livestock on the scales to be weighed, and a suitable force of employees to receive and yard the livestock when it is driven off the scales.

45. For its services and the use of its facilities heretofore described, the stockyard company makes a yardage charge on a per-head basis and a separate charge for feeding. The respondents deduct these charges from the gross proceeds of sale of the livestock and pay them to the stockyard company. Separate charges are made by the stockyard company for services
290 and the use of facilities in connection with the branding, dipping, testing, immunization, or other special services. Usually these special services are required in connection with the movement of livestock from the market back to the country, and

the charges therefor are paid by the purchasers. If for any reason any of these services should be required by the shipper of livestock to market, the charges would be deducted from the proceeds of the sale of his livestock.

46. After livestock has been sold and weighed, it is yarded and held in pens by the stockyard company for delivery to the purchaser, or until it can be loaded, if it is to be shipped to points outside the market. If the livestock is to be shipped, the employees of the stockyard company load it on the cars. This service is rendered by the stockyard company as agent for the carrier, and a separate charge is paid by the carrier.

47. The Kansas City Stock Yards Company endeavors, through advertising and soliciting, to induce shippers to consign their livestock to market for sale and to attract buyers for such livestock. It maintains a number of employees in the country who make contacts with producers and growers of livestock. These men have knowledge of market conditions and the various grades and classes of livestock. The stockyard company maintains an information bureau, which keeps in touch with the field representatives and gives them current market information. They assist farmers and producers in sorting and grading their livestock, disseminate useful market information, and endeavor to obtain shipments for the Kansas City market. They do not attempt to influence the shipment of livestock to any particular commission firm (1T, 677–680).

48. A branch of the Uuited States Department of Agriculture maintains an office at the stockyard, which is a service organization having for its purpose the collection and dissemination of market information. This office maintains a bulletin board in the Exchange Building, on which it posts information in regard to the estimated receipts at Kansas City and other leading livestock markets of the country, the prices and trend of prices at the various markets, and the prices of dressed meats in Philadelphia, Boston, and New York. Facts as to local market conditions are obtained by employees of that office, who are regularly assigned to different divisions of the yard for the purpose of making contacts with salesmen and buyers. A system of leased wires is maintained whereby similar facts are readily obtained from other markets. In addition to posting information from time to time on the bulletin board throughout the day this office disseminates it by radio at three different periods, furnishes it to the telegraph companies and to the press associations, and publishes a mimeographed report, which circulates extensively among producers and others in Kansas, Missouri, and, to a certain extent, in other States. The informational service of this office is available to all who request it (1T, 896–903).

291 V. Disposition of Livestock Receipts

49. Livestock received at the Kansas City market falls into two general classes: (1) stockers and feeders, and (2) killers, or butcher livestock. The demand for the stockers and feeders comes principally from those producers who are equipped to feed and finish livestock, either in feed lots or on pasture lands. The livestock ready for slaughter is purchased by local packers and butchers and by packers located at distant points. The chief outlet for this class of livestock is the local packer demand. Contiguous to the market are located the plants of the four large packers, Swift, Cudahy, Wilson, and Armour. There are also small packers and local butchers who cater principally to the local demand for dressed meats and meat products. The outside packers usually make their purchases through order buyers, who are regularly engaged in that business at the market. Local packers and butchers are customarily represented on the market by salaried employees. Feeders and finishers generally purchase livestock through commission firms, although they sometimes make their own purchases. There are also dealers at the market who buy for the purpose of reselling at a profit, either on the Kansas City market, or some other, without slaughtering, and also without feeding such livestock to any great extent. Although dealers operate to some extent in connection with the handling of all classes of livestock, their principal activity at the Kansas City market is in buying and selling stocker and feeder cattle. Their function is primarily that of buying unsorted lots and small lots of cattle, which they later sort into different grades and classes to meet the requirements of the feeders and finishers.

50. The demand for livestock in Kansas City, and especially that for hogs, is greater than that supplied by the livestock arriving at the public market. Large numbers of hogs destined for local slaughter in Kansas City do not pass through the stockyard. Large purchases of hogs are made by packers for slaughter in Kansas City at their plants at private stockyards operated by such packers where sales are consummated without the payment of any market expense but by and with the aid of and upon the basis of market prices as currently determined on the date of purchase at the Kansas City stockyards. The effect of this increasing practice on the part of local packers diminishes the volume of hogs offered for sale at the Kansas City stockyards and handled by the respondents.

## VI. Business in Which The Respondents Are Engaged

51. In the early development of the West, drovers were accustomed to bring their livestock to a convenient point at the junction of the Kansas and the Missouri Rivers and there sell it. With the development of trading in livestock at this central point, there grew up a more firmly established and permanent market place. Some of those who resorted there sold not only the livestock which belonged to them but undertook the
292 selling of that belonging to others. Later, resident selling agencies were developed, which devoted their attention exclusively to the handling of livestock for others at the central market. While it is the privilege of the owner or shipper of livestock to the Kansas City public market to sell his own livestock, the complicated machinery of the market place, which the selling agencies and the stockyard company have worked out for their own convenience, make it a practical necessity for the producer to consign his livestock to some regular selling agency for sale. A like situation prevails with respect to many who seek to buy livestock on the market. They may neither be able to come to the market in person nor find it to their advantage to maintain employed buyers. A demand has developed, therefore, for the services of those who stand ready on the market to act as representatives of the buyers. There have come into existence two somewhat distinct classes of operators. The first consists of what is commonly known as commission firms. They hold themselves out to the public both to sell and to buy livestock on a commission basis. Generally speaking, the buying operations of commission firms constitute a small part of their total business. The second class is made up of that group of respondents commonly known as order buyers. They specialize in buying livestock on order and do no selling on a commission basis.

52. The nature of the business in which the respondents are engaged is such that it may be carried on under different types of organization. Among the respondent firms, there are individual proprietorships, partnerships, and corporations. One of the respondent firms is operated as the branch house of a firm maintaining its principal headquarters at another market. Four of the respondent firms are registered to handle sheep only. All others engaged in selling and buying livestock hold themselves out to the public to handle cattle, calves, hogs, and sheep. Some order buyers specialize in the handling of one species of livestock. Others handle all species.

## VII. Service Rendered by the Respondents

53. The livestock commission business carried on by the respondents is conducted on the premises of the stockyard company. The physical handling and caring for the animals and their selling and weighing take place in pens belonging to the stockyard company and assigned by it to the various respondents. The office work growing out of the sale of the animals and the accounting to the owner for the proceeds of sale is carried on in the Exchange Building, also owned by the stockyard company. The respondents do not pay for the use of the pens but pay rent for the office space which they occupy in the Exchange Building. The rendition of the services of selling and buying livestock makes it necessary for the respondents to employ assistants in the yard and in the office. There is a wide variation among the firms as to the character of their organization and in the extent to which work can be specialized. A relatively small volume of business does not permit of that degree of specialization which is possible in the case of a firm which receives a large volume of business. Most of the larger firms have a separate department for each species of livestock handled and usually place a head salesman in charge of each department. In some instances, divisions exist within a department, as, for instance, in the case of those firms which handle a large volume of business. Such firms may have a fat-steer division, a stocker-and-feeder division, a butcher-cattle division, and a calf division. On the buying side of the market, each buyer is generally looking for a specialized grade or class of livestock. Those packers who are represented by salaried buyers have special buyers for the different grades and classes of cattle. Specialization has not been carried to the extent in the case of hogs and sheep that it has in the case of cattle. Order buyers are usually in the market for distinct grades and classes of livestock. Dealers generally do not specialize to any great extent. Their market function is to buy mixed grades and classes of livestock and, then, to sort them in accordance with the needs of the trade. In some cases, the owner, or owners, of a small firm do much of the yarding and office work in addition to the selling of the livestock.

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54. The situation with respect to specialization among salesmen applies, in general, to the yarding and office work. The large firms divide their help into divisions in the cattle alleys and place each division in charge of a head yardman. In the larger firms, the various office employees are frequently assigned to special tasks, or departments under the supervision of an office manager. As a general rule, the yard work is heaviest in the early part of the day, and the office work heaviest in the latter part of it. Be-

cause of this, some of the office employees may assist in the yard work in the forenoon, and some of the regular yard employees may help in the office in the afternoon. The organizations are flexible and permit a high degree of cooperation among the employees of a firm.

55. Some of the respondent firms do not have sufficient livestock of certain species to warrant the maintenance of a selling organization for that species. Many firms, for instance, do not have sheep salesmen. These firms engage the salesmen of some other firm. This arrangement concentrates the selling and yarding of sheep in the hands of a comparatively few firms, and thus makes possible a high degree of efficiency. A firm which does not elect to sell the sheep consigned to it assesses the regular commission charge against the consignor and, with a part of this revenue, pays someone else for selling the sheep. Each firm handles all the office and accounting work growing out of the sale of sheep consigned to it. An arrangement similar to that described for the handling of sheep is sometimes entered into with respect to hogs and cattle, but in the case of the latter species the arrangement is less frequent than in the case of sheep. A few firms do not maintain their own office force, but engage other respondent firms to do their office work for them.

294 56. Most of the livestock received for sale at the Kansas City market arrives during the early morning hours. It is important that the livestock be handled expeditiously, in order that it may be watered, fed, and sorted in time for the market. The bulletins prepared by the stockyard company with respect to the arrivals of livestock are hung in the train office building, and there respondents' employees go to obtain information as to arrivals. Frequently they obtain additional information in regard to consignments from letters, telephone calls, and personal contact with shippers. As soon as the information is obtained, the representative of the commission firm goes to the designated place near the track where the livestock is unloaded and obtains a chute slip showing the car number and the number of chute in which the stockyard company has placed the livestock.

57. Rail arrivals of sheep are driven from the unloading chutes to the pens of respondent market agencies, and formal delivery is made there. Cattle and hogs arriving by rail are delivered to the respondents at unloading chutes or nearby pens. After the representative of the commission firm has ascertained the pen in which the livestock has been placed, he goes to the representative of the stockyard company who is in charge of the particular division, and requests delivery. This representative of the commission firm is usuall called a "train runner." The livestock is counted

out of the pen into the alley, and a train runner then goes ahead of it, leading the way to the pens assigned to his firm. In the case of cattle and calves delivered at the unloading chutes, the stockyard company furnishes a man to go behind each load of livestock. During periods of heavy runs, a train runner may lead a procession containing a number of carloads, each kept separate from the other by a stockyard employee. Such assistance is not furnished by the stockyard company in the case of drive-in hogs nor in those instances where cattle are yarded temporarily in holding pens. When livestock reaches the pens of a commission firm, it is counted into the pens, usually by the head yardman for that firm. In the case of night arrivals during the season of heavy runs of cattle, some firms maintain a night train runner, either as an individual employee or one employed jointly with other firms.

58. Pens are assigned to the various commission firms in the different divisions of the yard. These assignments are made by a committee. The number of pens assigned to each firm is governed by the volume of business handled, and the location is governed largely by the length of time during which a firm has been in business.

59. Sheep arriving by truck are delivered at the sheep division. With respect to truck arrivals of hogs and cattle, it is necessary for the respondents to drive the livestock from the truck unloading chutes or nearby holding pens to their respective pens in the regular division. This work is accomplished either through individual employees or through those who make it their business to
295 drive livestock at a stipulated head charge. The stockyard company makes available information in regard to truck arrivals of livestock through notification slips placed in boxes at the respective drive-in unloading chutes.

60. In taking custody of livestock consigned to them for sale, respondents' employees make such records and memoranda as will enable them to preserve the identity of each consignment. Through experience gained in handling livestock, these employees can often identify animals once they have seen them. Frequently a consignment of livestock is owned by two or more people. Such livestock is usually marked in some distinctive way, in order to maintain the identity of each owner's livestock. There are also frequent shipments of branded livestock, and these brands serve as a basis for identifying ownership.

61. Occasionally some of the livestock contained in a consignment is intended for a market agency other than the one to which it is billed. Such livestock is placed in a separate pen. The re-

ceiving agency then notifies the firm to which the livestock is to be delivered, and that firm removes the animals to its pens.

62. Traders, who buy and sell in the yard for profit, sometimes place their livestock with respondent firms to be sold. This is called "planting", and such livestock is referred to as "seconds." In such cases, the traders usually drive their livestock to the commission firms' pens.

63. Upon receipt of livestock in its pens, an employee of the commission firm, usually the head yardman, orders feed from the stockyard company, which maintains the equipment for the delivery of the feed and employees who do the feeding. The employee of the commission firm keeps the record of the amount of feed ordered. Sometimes the head yardman will sort and grade the livestock before feeding. As soon as it has been fed and graded, it is watered. Frequently, when pens are available, a consignment of livestock will be divided into several bunches, in order to enable the animals to drink with less confusion. Some of the work of preparing livestock for sale is done by the yardmen. When the salesmen arrive in the yard, they may do further sorting and grading.

64. The regular market hours are from 8 a. m. to 3 p. m., but the stocker-and-feeder class of livestock may be bought or sold at any time. Salesmen usually go to their offices some time before the market opens and review available information, in order that they may judge the trend of the market. In many instances, salesmen have seen the cattle in the country before they were shipped. Frequently the owners telephone or write to the salesmen about the shipment. Sometimes shippers will accompany their shipments and give the salesmen helpful information in regard to the livestock to be sold. Salesmen also check up on the condition of the previous day's market. They obtain similar information in regard to the other livestock markets. They ascertain the estimated
296 receipts of livestock at the Kansas City market and other markets for that day and opening prices for the day at other markets, insofar as such information is available.

65. The salesman then goes to the yard to look over the consignments and does whatever sorting is, in his opinion, necessary. When the market opens, the buyers go to the pens, where they, in company with the salesmen, look at the livestock. According to the custom of the market, only one buyer is taken into a pen at one time. If the livestock is suitable for the buyer, an offer and a bid are made. If a sale is not consummated, the buyer goes on to some other salesman, and the livestock is shown to the next buyer. On some days the buyers are very active and go out into the yard as soon as the market opens. On other days

the buyers go out late in the forenoon and are slow to buy. There are many factors, the more important of which are the activity of the consuming demand and the supply of livestock, which determine whether a market is active or dull. It is bargaining among salesmen and buyers which finally determines what the market prices for the various grades and classes will be each day. The market may be strong at one time of the day and weak at another time. It is necessary that salesmen study the forces which affect the market from hour to hour, in order to determine in their own minds the best time at which to sell their livestock. Sometimes, although not frequently, a shipper will instruct a salesman not to sell livestock under a stipulated price. However, generally speaking, the shipper leaves this matter to the judgment of his salesmen. In addition to the study of information in regard to supply and demand as factors affecting prices, a salesman must also be a judge of the factors which affect the value of livestock. In view of the fact that there is a wide margin between the prices paid for the highest quality of cattle and the lower grades of cattle, it becomes a very responsible task for a salesman to judge accurately the grades of cattle which he has to sell.

66. Once the market is made, sales are consummated rapidly, and the movement of livestock to the scales for weighing begins. The yardmen usually drive the livestock to the scales, although the salesmen, in some instances, assist in this work. As soon as sales are consummated, the salesman gives his yardman information in regard to the names of the owner and the buyer and how the livestock is to be weighed if special sorting at the scales is required by the buyer. The yardman gives the weighmaster the information as to the owner and purchaser of the livestock when the livestock is driven on the scales. The weighmaster records this information on the scale ticket. When the livestock is driven off the scale, it becomes the property of the purchaser, and the employees of the stockyard company take possession of it and yard it for the buyer. Copies of scale tickets are taken by the yardman to the salesman, either in the yard or in the office, and the salesman marks the price thereon.

67. The respondents also assume certain responsibility in connection with the determination of the credit of the buyers of livestock. They know those who are members of the clearing house and do not hestitate to sell livestock to such mem-
297 bers. If the prospective buyer is not a member of the clearing house, it is necessary to investigate his credit. A large percentage of the purchases are made by those whose credit is already known to the respondents' salesmen.

68. The price of crippled and dead animals is determined upon a salvage basis. Standing arrangements are had with the Standard Rendering Company in connection with the price paid for dead animals, and similar arrangements with packers govern the determination of the prices paid for crippled animals. In this manner the crippled and dead livestock can be handled promptly and with the greatest convenience to all concerned.

69. In the cattle division there are many small lots of livestock to be weighed. There are frequent drafts consisting of only one or two head. This condition prevails especially in connection with the many grades and classes of butcher livestock. The larger commission firms maintain what is known as a "jack pot" man. He is one who possesses the peculiar ability to identify many different animals as to ownership and buyers. As a salesman consummates the sales of these individual head or small lots, he advises the "jack pot" man, who turns the animals into the alley. When he has accumulated a convenient number of head, he drives them to the scale where he sorts them according to ownership and purchaser. Special scales are maintained for weighing "jack pots." This procedure makes it possible to economize in time and equipment in handling this character of business.

70. Those who are engaged in the business of buying livestock undertake to inform themselves in the same way as the salesmen do. Those who buy livestock on order will make a survey of the livestock in the yard to determine the supply of those classes and grades which are suitable to their orders. After they find a good supply of the kind of livestock which they know some of their customers use in their trade, they may telegraph or telephone to their customers, give an estimate of the price, and the prospect of obtaining supplies that will meet their particular requirements. Sometimes these customers place standing orders with their buying representative at the market. Frequently customers come to the market and accompany the buyers as they go about the yard looking for the kind and class of livestock desired. Sometimes order buyers will buy livestock when the price appears favorable and then obtain the orders later. One of the chief qualifications of a buyer is to be able to judge the killing qualities of slaughter livestock and the feeding and finishing qualities of stockers and feeders. In case the customer is a countryman or someone not known to the buyer, it is necessary to investigate his credit. Usually those buyers not regularly engaged in business at the Kansas City market purchase on short-time credit. The order buyer must pay for the livestock promptly.

71. If livestock is purchased to be shipped out, the buyer orders the necessary cars from the railroad company as soon

298 as the purchase is made. Then he ascertains the number of head and the pen in which the livestock is held, and gives this information to the railroad. In case of stocker-and-feeder livestock which is bought to go back to the country, there are certain incidental services which may be necessary, such as branding, dipping, dehorning, and vaccinating. Although these services are performed by the stockyard company, the yardman for the buyer supervises such operation. When the livestock is ready for shipment, the loading out is done by the stockyard company's employees. It is customary for a yardman, or someone representing the buyer, to supervise this work.

72. The office work in connection with the buying and selling of livestock consists primarily in rendering accounts to shippers and purchasers and making remittances and collections, as the case may be. Forms known as account sales are used in rendering accounts in the case of livestock sold. One of these forms is prepared covering each consignment, showing the name of purchaser or purchasers, the number of drafts, the number of head, weight, and price of each draft, gross proceeds, items of expense (such as freight, feed, yardage, commissions, and other deductible items), and the net proceeds. A copy of this is sent to the owner. In case of plural ownership consignments, the accounting may be handled as in the case of single ownership consignments, in which event the prorating is done at the shipping point. However, it happens frequently that a commission firm is requested to do the prorating, which consists in figuring the gross proceeds of sale of each owner's livestock, the various expenses prorated to each owner, and the net proceeds of sale of each. Sometimes a request is made for individual account sales for each owner in a plural ownership consignment. In connection with the purchase of livestock an account purchase is prepared somewhat in the same manner as an account sale, giving the details as to the transaction, including the cost and any local expenses, such as commissions. Bills for the purchase of livestock which are presented are checked before the account purchase is made out.

73. The respondent market agencies which are engaged in selling livestock have followed the practice for a number of years of remitting the proceeds of sale of livestock through banks. Usually the shipper will designate the bank to which he desires that the proceeds of sale be sent. The respondents have available to them information with respect to the various Kansas City banks which are correspondents of the local banks throughout the Kansas City trade territory. As soon as the net proceeds of sale have been computed, a commission firm will place an order with its bank to

deposit the proceeds to the credit of the shipper at his bank. If requested, this transaction is handled by telegraph rather than by mail. A special effort is made by all market agencies to remit as promptly as possible, and the remittances are made as soon as the net proceeds of sale of each consignment can be ascertained, even though the collections from the buyers have not been made. Usually remittances of proceeds from the sale of truck-in livestock are made by firm check. In some cases, such proceeds may be remitted through the bank or by cashier's check. Most
299 of the collections are made through the clearing house.

The packers, order buyers, and brokers who clear traders are members of the clearing house, and, under the rules of that organization, there are certain time limits within which they must remit through the clearing house for the livestock which they have purchased. Order buyers usually draw drafts upon their customers as soon as the livestock has been shipped, or they may take their customer's check. It seldom happens that a customer in placing an order will advance the cash.

74. Salesmen and members of the respondent firms spend considerable time in the office interviewing shippers. This is done usually after the selling is completed. If shippers are not at the market, a salesman will write a letter to each one for whom he has sold livestock that day, giving information in regard to the transaction and such other general market information as he may deem helpful to his customer. However, this is not always done with respect to livestock received by truck.

75. There exists an arrangement between each of the respondents and the stockyard company whereby the latter, acting as agent of the carrier, will make formal delivery of livestock before freight charges on the consignment are paid. The stockyard company requires each respondent market agency to which livestock is shipped to furnish a bond covering the payment of freight, yardage, feed, and any other charges. These charges are deducted from the gross proceeds of sale of livestock before remittances are made to the shippers. The bills for these items are presented to respondents through the clearing house.

76. Each respondent furnishes a bond conditioned upon the faithful and prompt remittance of the proceeds of sale of livestock and the prompt execution of orders and the payment for livestock bought on order. Such a bond is required by the rules of the Kansas City Live Stock Exchange of its members, and such a bond is required of all market agencies under the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder.

VIII. Personal Service Character of the Respondents' Business

77. The livestock commission business is essentially of a personal-service character. The amount of capital necessary to conduct it is relatively small. The use of certain material equipment, however, such as office furniture and fixtures, and equipment of more or less elaborate character, automobiles and horses, is essential in the rendition of the service. The automobiles are used for trips to the country, both to solicit shipments and to appraise livestock. They are also used for travel to nearby feed yards, whereat livestock may be under the control of respective respondent firms while it is being fed, and also whereat the respondents sometimes consummate sales of livestock. In some instances, the automobiles are owned by the respondent firm which uses them;
in others, they belong to a member or employee of the
300 firm, and their use is compensated for on some prearranged
basis, such as actual expense or mileage. The horses are used in the cattle yards and are ridden by the cattle salesmen in the course of their handling and selling of cattle. In some instances, they also are ridden by patrons who either have cattle consigned to the respondents for sale or else are seeking to purchase cattle from the respondents. In some instances, these horses are owned by the respective respondent firms who use them; in others, they are the property of the individual salesmen, who may be owners or employees of a respondent firm; in still other instances, they belong to the stockyard company and are rented, as occasion requires, at an agreed rental, usually on a time basis.

78. In addition to the more or less permanently invested capital enumerated above, a certain amount of cash working capital is required. The business is essentially a cash one; that is to say, it comprises the receipt and remittance of the proceeds of sale of property owned by its patrons. Nevertheless, only those sales of livestock which are billed to the purchaser prior to 2 p. m. on the day of sale are paid for on that day. The respondents follow the practice of remitting the proceeds on the day of sale. Such remittances are made by deposits in banks at Kansas City for transmission to the banks of the respondents' patrons. This form of remittance is desirable because it eliminates the so-called "float." It requires, however, that each respondent firm have on hand, or available through bank credit, a sufficient amount of working capital daily to cover the difference between the total proceeds of sales made each day and the total collections realized on that day. A greater need for cash working capital arises from the respondents' activities in the purchases of livestock for their customers. The custom of the market place is such that this livestock must be paid

for not later than 10 a. m. of the day following its purchase. That patron who usually is a feeder rarely comes to the market in position to make cash payment. This is partly at least because he does not know in advance exactly what the monetary requirements are to be and because in many instances he cannot arrange credit with his local bank until after the arrival of the livestock at his railroad station or farm. It appears impracticable to avoid extension of credit to these patrons. The livestock so purchased is paid for by the respondent firm, and a draft is drawn on the patron through regular banking channels. Such drafts ordinarily are paid within from two days to two weeks, but infrequently may require more time.

79. The revenue of the respondents' business consists of commissions charged by them for the sale and purchase of livestock. By far the greater portion of it comes from sales. The revenue from sales is deducted from the gross proceeds of such sales and, therefore, is received daily. This practically does away with any necessity for accounts receivable except in those infrequent instances in which a respondent firm advances money to a patron in contemplation of the sale of livestock, either already received at or on
301 its way to the market. In the buying of livestock, the receipt of commissions customarily is delayed from two days to two weeks. Some of respondents' cash-requiring expenses are paid in advance, necessitating a small amount of working capital for that purpose. There is a further need for working capital to tide over those seasons when the low run of livestock may not produce enough income to maintain the overhead expenses of the business. It is not altogether practicable for a commission firm to expand and contract its organization to meet the fluctuation in receipts of livestock. Additional yard help may be hired during the heavy seasons, but there are certain employees, such as salesmen, who must by the nature of the business be retained throughout the year.

80. The stockyard company requires of those engaging in business on the market a bond covering, among other things, the payment of the freight, feed, and yardage charges. In addition to the formal requirements of registration and the filing of a tariff, the Packers and Stockyards Act, 1921, as amended, requires each market agency to give a bond covering the faithful and prompt remittance of proceeds of sale of livestock, and the prompt and faithful execution of orders for the purchase thereof and the payment for such purchases. The maintenance of these bonds necessitates a small amount of capital.

81. By far the greater part of the service rendered by the respondents to their patrons comes not from the employment of

property or money but from the application by respondents and their more responsible employees of personal skill, judgment, and integrity. Such skill and, to a considerable extent, judgment result from the training and experience acquired by the respondents and their more responsible employees in the course of that development whereby one who enters the business in youth as a yardboy or minor office employee grows into a salesman, proprietor, or supervising office employee. While general scholastic training is not unusual among the respondents, the character of the business is such that one may become better fitted for the higher positions by entering the low positions requiring little, if any, previous experience, and learning the business while working up to the better places. The personnel of the business may be divided into those whose major work is performed among the livestock in the pens and alleys, and those whose time principally is spent in the offices. The first of these usually enter the business as young men, with a background of livestock experience on farms. Nearly always they begin as yardmen for the commissionmen—however, in some instances, as yardmen or other employees of the stockyard company. As yardmen, they work side by side with and as assistants of the salesmen. Through this association, they require the skill requisite to beginning as salesmen. While still yardmen, they are permitted, from time to time, to sell livestock under the supervision of the salesmen, and later to sell small consignments of less important grades and classes on their own responsibility. This leads them to the position of salesmen when a vacancy occurs in the sales force. The salesmen come in personal contact with the patrons and acquire a personal following, which may become sufficiently large to enable them to acquire a membership in the firm by which they are employed, or to establish a new firm of their own.

302 82. This method of advancement to the higher office positions is not dissimilar to that which has been described with respect to the employees who work in the yard. In neither instance, however, have the more responsible employees and proprietors always worked up in the particular firm with which they are presently associated. In some instances, of course, the requisite experience has been gained while associated with other commission firms at Kansas City or at other livestock markets or while employed by a stockyard company or engaged in some activity related to the marketing of livestock at public stockyards. However, the rule is that the personnel holding the more responsible positions have gained their knowledge as an incident of employment in lesser positions at salaries compensatory for the services performed in those positions.

## IX. Rates Charged by the Respondents for Services Rendered

83. The respondents who were members of the Kansas City Live Stock Exchange filed, to become effective on January 1, 1926, their Tariff No. 2, setting forth all rates and charges for selling and purchasing livestock on the Kansas City market. Each of such respondents filed its separate Supplement No. 3 to Tariff No. 2, effective January 1, 1930. This supplement contained rates and charges assessed by each respondent filing said supplement to cover the charges made for insurance on livestock in the yards. With this supplement there was filed Tariff No. 2, as modified by Supplement No. 2 thereto. Certain of the respondents, pursuant to provisions of Tariff No. 2, as amended by Supplement No. 2, filed their individual tariffs covering their rates and charges for purchasing livestock. On May 11, 1932, and prior to the issuance of the Acting Secretary's order of May 18, 1932, all respondent commission firms (i. e., those who sell livestock on a commission basis) and all the respondent order buyers except three filed, severally, a uniform tariff of rates and charges for selling and buying livestock, to become effective on May 23, 1932. The two cooperative commission firms filed schedules, effective on June 18, 1932, in conformity with the order of May 18, 1932. These two cooperative agencies later filed schedules, effective on October 10, 1932, modifying somewhat their commission charges.

84. A summary of the tariffs of the respondents in effect at the Kansas City market on June 14, 1933, follows:

### Selling Charges

CATTLE AND CALVES ARRIVING BY RAIL

| | *Per head* |
|---|---|
| Calves: | |
| 1 to 20 head, average weight 400 lbs. or under | 30¢ |
| All over 20 head, average weight 400 lbs. or under | 25¢ |
| Yearlings and Cattle: | |
| 1 to 20 head, average weight 400 to 800 lbs | 60¢ |
| All over 20 head, average weight 400 to 800 lbs | 40¢ |
| Cattle: | |
| 1 to 20 head, average weight 800 lbs. and over | 70¢ |
| All over 20 head, average weight 800 lbs. and over | 60¢ |

303 CATTLE AND CALVES ARRIVING BY TRUCK

| | |
|---|---|
| Calves: | |
| 2 to 20 head, averaging 400 lbs. or under | 30¢ |
| All over 20 head, averaging 400 lbs. or under | 25¢ |
| Yearlings and Cattle: | |
| 2 to 20 head, averaging 400 to 800 lbs | 65¢ |
| All over 20 head, averaging 400 to 800 lbs | 45¢ |
| Cattle: | |
| 2 to 20 head, averaging over 800 lbs | 70¢ |
| All over 20 head, averaging over 800 lbs | 60c |

MINIMUM CHARGE FOR ONE HEAD

| | Per head |
|---|---|
| Calves | 40¢ |
| Cattle | 80¢ |
| Hogs: | |
| 1 to 40 head, averaging over 130 lbs | 25¢ |
| All over 40 head, averaging over 130 lbs | 10¢ |
| 1 to 50 head, averaging less than 130 lbs | 20¢ |
| All over 50 head, averaging less than 130 lbs | 5¢ |
| Minimum Charge for One Head | 35¢ |

SHEEP OR GOATS ARRIVING BY RAIL

| | |
|---|---|
| For the first 120 head in each car | 10¢ |
| Additional head over 120 head to 160 head | 5¢ |
| Each additional head over 160 head | 4¢ |

SHEEP AND GOATS ARRIVING BY TRUCK

| | |
|---|---|
| For each 300 head, or part thereof: | |
| 1 to 10 head | 25¢ |
| 11 to 40 head | 20¢ |
| 41 to 60 head | 15¢ |
| 61 to 300 head | 4¢ |
| Minimum Charge for One Head | 35¢ |

## Buying Charges

CATTLE AND CALVES SHIPPED OUT BY RAIL

Cattle and Calves, 50¢ per head; minimum, $12 a car; maximum, $15.
Calves, 30¢ per head, with a maximum of $15 per car.

304

CATTLE TRUCKED OUT

50¢ per head; maximum, $15 for 22,000 lbs.
Cattle Shipped out for Slaughter, $15 a car.
Cattle Trucked out for Slaughter, 50¢ a head; maximum, $15 for 22,000 lbs.
Hogs:
Feeders and Stock Pigs:
Up to 50 head, 20¢ per head.
51 head and above, 5¢ per head.
Slaughter Hogs:
Up to 50 head, 20¢ per head.
51 head and above, 5¢ per head.

SHEEP OR GOATS SHIPPED OUT BY RAIL

$12, single-deck; $16, double-deck.

SHEEP OR GOATS DRIVEN OR HAULED OUT

Up to 125 head, 20¢ per head; maximum, $12.
Above 125 head, 15¢ per head additional; maximum, $16 up to 250 head.

A summary of the tariffs of the cooperative market agencies in effect at the Kansas City market on June 14, 1933, follows:

## Selling Commissions

| Straight cars | Head | Minimum | | Maximum | |
|---|---|---|---|---|---|
| | | S. D. | D. D. | S. D. | D. D. |
| Cattle | $.60 | $13.00 | | $15.50 | |
| Calves | .30 | 13.00 | | 15.50 | $18.50 |
| Hogs | .20 | up to 40 head. | | | |
| | .10 | each additional head over 40. | | 12.00 | 16.00 |
| Sheep | .15 | 10.00 | | 12.00 | 17.00 |

Mixed Cars:

Cattle, 65¢ per head—not to exceed $15.50 for the cattle in a car.

Calves, 32¢ per head—not to exceed $15.50 for the calves in a single-deck or $18.50 for the calves in a double-deck car.

Hogs, 25¢ per head up to 40 head;

10¢ per each additional head over 40—not to exceed $12 for the hogs in a single-deck car, or $16 for the hogs in a double-deck car.

Sheep, 15¢ per head—not to exceed $12 for the sheep in a single-deck or $17 for the sheep in a double-deck.

305 Drive-Ins:

Cattle, 65¢ per head, with a maximum of $16.50 up to and including each 27 head.

Calves. On each 75 head of calves, or fraction thereof, in one consignment belonging to one owner, the rates shall be determined as follows: 30¢ per head, with a maximum charge of $16.50 up to and including 55 head; 25¢ per additional head above 55, with a maximum charge of $17.50 up to and including 75 head.

Hogs, 25¢ per head up to 40 head, inclusive:

10¢ per each additional head with a maximum charge of $14 on any one consignment.

Sheep. On each 250 head of sheep, or fraction thereof, in one consignment belonging to one owner, the rate shall be determined as follows: 20¢ per head, with a maximum of $13 up to and including 125 head; 15¢ per additional head above 125, with a maximum charge of $18 up to and including each 250 head.

## Buying Commissions

Cattle or Calves:

Non-Slaughter:

(a) Shipped out—50¢ per head, with a minimum of $12 and a maximum of $15 per car.

(b) Trucked or driven out—60¢ per head, with a maximum of $16, and 22,000 pounds shall be considered

as the maximum weight to be purchased at this maximum rate.

Slaughter:

(c) Shipped out—Maximum, $15 per car.

(d) Trucked or driven out—60¢ per head.

Hogs:

(e) Slaughter—$7.50 for a single-deck car; $12 for double-deck car.

(f) Stock—$12 for single-deck car; $20 for double-deck car.

Driven or Hauled out:

25¢ per head up to 48 head.

On larger lots, carload rates; 120 head to be considered a single-deck load.

Sheep or Lambs:

(g) Sheep or lambs—$12 per single-deck and $16 per double-deck car.

(h) Sheep or lambs driven or hauled out—20¢ per head, or a maximum of $12 up to and including 125 head; 15¢ per additional head above 125, with a maximum charge of $16 up to and including 250 head.

306 The foregoing are the basic rates, but do not include all charges made. There are, in addition, provisions in the respondents' tariffs for certain extra-service charges, minimum charges on consignments, and special charges for selling the livestock of dealers. Besides these, there are other miscellaneous provisions with respect to the application of the rates.

## X. Volume of Business Handled by the Respondents

85. The revenue-producing business of the respondents consists of livestock sold and livestock purchased on a commission basis in the Kansas City stockyard and, to a comparatively slight degree, at points away from Kansas City. The volume discussed under this heading relates to that portion of the business of the respondents transacted at the Kansas City market. Most of the respondents who sell livestock also purchase it on order, and charge a commission therefor. Such purchasing is the principal business of certain respondents known as order buyers.

86. While in this order the unit principally used for rate-making purposes is the head of each respective species of livestock, simplicity and clarity in the statement of relative revenue-producing volumes of the respective respondents require the use of some common denominator. This is for the reason that the commission for the sale or purchase of a single head of cattle necessarily exceeds to a considerable degree such commission with respect to a hog or a sheep. The fact that a carload of hogs or sheep contains many more animals than a carload of cattle brings the

commission revenue produced from it much more nearly on a level with that produced from a carload of cattle. Therefore, in this discussion of the revenue-producing volume, the livestock of each species handled by each respective respondent commission firm is reduced to carload equivalents. The following tables set forth the number of car-lot equivalents of livestock of all species handled by each of the respondents in 1929. For the year 1931 they show, in addition to the car-lot equivalents, the actual number of head of each species received by rail and by truck and used in determining the number of car-lot equivalents.

307 Volume Handled by Commission Men in 1929

| Firm No. | Number of cars | Firm No. | Number of cars |
|---|---|---|---|
| 33 | 11 | 62 | 1,306 |
| 41 | 131 | 48 | 1,367 |
| 37 | 162 | 7 | 1,382 |
| 72 | 165 | 70 | 1,400 |
| 66 | 178 | 55 | 1,441 |
| 60 | 277 | 52 | 1,463 |
| 36 | 365 | 53 | 1,583 |
| 58 | 424 | 65 | 1,625 |
| 78 | 449 | 26 | 1,736 |
| 79 | 449 | 58 | 1,775 |
| 11 | 456 | 68 | 1,838 |
| 43 | 492 | 34 | 1,894 |
| 74 | 499 | 28 | 1,900 |
| 31 | 512 | 14 | 2,124 |
| 67 | 555 | 25 | 2,147 |
| 1 | 596 | 42 | 2,260 |
| 61 | 611 | 18 | 2,381 |
| 76 | 612 | 12 | 2,938 |
| 6 | 642 | 83 | 2,980 |
| 17 | 656 | 71 | 3,117 |
| 30 | 805 | 13 | 3,343 |
| 15 | 829 | 84 | 3,541 |
| 8 | 834 | 51 | 3,786 |
| 23 | 871 | 73 | 4,051 |
| 5 | 879 | 35 | 4,394 |
| 59 | 950 | 10 | 4,913 |
| 60 | 1,000 | 36 | 4,995 |
| 77 | 1,022 | 82 | 5,415 |
| 44 | 1,039 | 46 | 7,553 |
| 16 | 1,204 | 54 | 8,188 |
| 75 | 1,206 | 63 | 8,377 |
| 29 | 1,285 | 50 | 8,778 |
| 4 | 1,302 | | |

Of these 65 firms listed above, 11 firms handled over 50 percent, and 25 firms handled over 75 percent of business received by all.

Volume Handled by Order Buyers in 1929

| Firm No. | Number of cars | Firm No. | Number of cars |
|---|---|---|---|
| 49 | 11 | 3 | 480 |
| 47 | 34 | 38 | 947 |
| 24 | 75 | 21 | 1,194 |
| 56 | 79 | 32 | 1,389 |
| 40 | 102 | 81 | 1,976 |
| 69 | 203 | 64 | 2,771 |
| 39 | 446 | 57 | 3,309 |

308 Volume Handled by Commission Men in 1931, Expressed Both in Head and Carlot Equivalents

| Firm No. | Number cars | Number of head | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Cattle | | Calves | | Hogs | | Sheep | |
| | | Rail | Truck | Rail | Truck | Rail | Truck | Rail | Truck |
| 37 | 67 | 1,062 | 154 | 94 | 179 | | 34 | | 321 |
| 33 | 72 | 899 | 365 | 118 | 97 | 537 | 1,153 | 115 | 690 |
| 72 | 88 | 1,791 | 218 | 206 | 121 | 453 | 624 | | 45 |
| 67 | 91 | 48 | 236 | 43 | 127 | 101 | 5,851 | | 580 |
| 88 | 90 | 2,553 | 155 | 125 | 63 | 353 | 69 | | |
| 11 | 106 | 853 | 431 | 37 | 264 | 955 | 1,712 | | 175 |
| 66 | 112 | 2,951 | 326 | 209 | 170 | 370 | 367 | | 283 |
| 1 | 257 | | | | | | | 25,999 | 1,571 |
| 74 | 314 | 5,744 | 1,737 | 550 | 494 | 690 | 1,674 | | 333 |
| 9 | 364 | 1,241 | 1,277 | 109 | 486 | 3,228 | 9,186 | | 598 |
| 79 | 381 | 7,764 | 967 | 1,164 | 727 | 1,255 | 1,713 | 1,234 | 1,021 |
| 78 | 421 | 8,948 | 951 | 283 | 448 | 3,002 | 1,267 | 1,451 | 1,961 |
| 76 | 424 | 3,915 | 3,300 | 478 | 1,707 | 2,952 | 4,847 | 690 | 863 |
| 61 | 425 | 514 | 3,512 | 101 | 5,355 | 982 | 6,115 | 41 | 950 |
| 87 | 432 | 415 | 225 | 149 | 202 | 25 | 201 | 89,910 | 5,430 |
| 17 | 446 | 6,433 | 1,589 | 668 | 1,395 | 1,008 | 5,236 | 268 | 488 |
| 19 | 447 | 9,608 | 1,212 | 575 | 604 | 2,747 | 1,576 | 832 | 420 |
| 6 | 605 | 9,912 | 2,942 | 1,943 | 937 | 3,457 | 4,711 | 367 | 853 |
| 15 | 702 | 7,194 | 3,839 | 1,691 | 2,062 | 3,076 | 17,179 | 1,662 | 2,150 |
| 43 | 785 | | | | | | | 81,150 | 37,410 |
| 30 | 814 | 20,154 | 1,133 | 1,236 | 295 | 683 | 2,808 | | 533 |
| 82 | 820 | 13,770 | 2,121 | 1,524 | 1,155 | 2,505 | 3,617 | 2,354 | 1,966 |
| 5 | 857 | | | | | | | 191,159 | 11,204 |
| 75 | 872 | 17,951 | 4,119 | 814 | 1,551 | 649 | 3,857 | 1,809 | 578 |
| 60 | 905 | 9,267 | 7,575 | 310 | 1,645 | 2,021 | 18,791 | | 753 |
| 77 | 906 | 15,398 | 2,583 | 1,597 | 1,084 | 5,340 | 3,980 | 857 | 778 |
| 29 | 962 | 17,073 | 2,526 | 2,165 | 1,005 | 5,223 | 6,462 | | 734 |
| 16 | 988 | 18,966 | 2,949 | 2,736 | 1,471 | 2,189 | 6,306 | 377 | 1,193 |
| 20 | 1,039 | 25,473 | 1,913 | 4,272 | 780 | 2,285 | 1,442 | 461 | 411 |
| 7 | 1,067 | 6,546 | 3,483 | 506 | 3,216 | 5,700 | 33,910 | 128 | 1,167 |
| 26 | 1,164 | 19,237 | 2,586 | 3,094 | 1,344 | 3,460 | 13,739 | 1,158 | 1,499 |
| 23 | 1,239 | 24,607 | 3,294 | 1,580 | 2,248 | 346 | 1,190 | 500 | 362 |
| 4 | 1,244 | 29,208 | 1,005 | 3,241 | 240 | 4,921 | 2,028 | 1,811 | 85 |
| 44 | 1,261 | | | | | | | 225,533 | 39,779 |
| 56 | 1,263 | 30,686 | 1,660 | 1,331 | 309 | 1,730 | 5,389 | 4,464 | 460 |
| 62 | 1,269 | 20,488 | 5,462 | 1,087 | 3,119 | 1,735 | 12,955 | 479 | 2,586 |
| 53 | 1,297 | 22,911 | 2,895 | 960 | 1,018 | 8,459 | 8,747 | 335 | 308 |
| 65 | 1,372 | 28,103 | 3,346 | 2,641 | 2,425 | 5,368 | 2,251 | 1,573 | 611 |
| 70 | 1,382 | 28,866 | 3,115 | 3,031 | 1,512 | 8,432 | 5,043 | 1,257 | 1,250 |
| 48 | 1,421 | 33,800 | 3,704 | 2,823 | 1,375 | 3,389 | 2,357 | 217 | 213 |
| 14 | 1,641 | 30,612 | 5,363 | 2,659 | 2,898 | 7,241 | 13,016 | 3,759 | 3,606 |
| 34 | 1,984 | 45,803 | 1,852 | 1,370 | 968 | 12,159 | 3,126 | 21 | 169 |
| 25 | 1,999 | 43,429 | 2,881 | 4,083 | 1,278 | 3,109 | 11,587 | 1,412 | 2,264 |
| 42 | 2,022 | 51,168 | 3,311 | 3,637 | 2,277 | 5,232 | 6,048 | 667 | 791 |
| 18 | 2,092 | 49,537 | 1,903 | 3,878 | 668 | 7,860 | 3,487 | 2,773 | 384 |
| 55 | 2,219 | 43,337 | 6,462 | 3,762 | 4,789 | 6,827 | 11,439 | 1,013 | 2,672 |
| 71 | 2,234 | 49,590 | 3,427 | 2,529 | 897 | 10,765 | 9,190 | 649 | 765 |
| 35 | 2,418 | 47,879 | 3,781 | 2,695 | 1,621 | 2,779 | 9,962 | 31,645 | 12,265 |
| 12 | 2,450 | 50,164 | 3,751 | 9,141 | 1,991 | 11,630 | 13,711 | 1,873 | 1,566 |
| 13 | 2,475 | 40,965 | 8,272 | 6,142 | 3,770 | 16,989 | 22,971 | 2,318 | 3,370 |
| 73 | 2,936 | 63,920 | 1,970 | 6,551 | 1,143 | 13,122 | 21,055 | 3,484 | 551 |
| 51 | 2,976 | 1,228 | 8,991 | 389 | 10,944 | 12,192 | 125,217 | 275 | 6,650 |
| 84 | 3,021 | 55,753 | 2,879 | 5,025 | 937 | 5,822 | 5,381 | 109,123 | 2,286 |
| 82 | 3,741 | 83,455 | 4,515 | 12,284 | 1,915 | 16,773 | 13,064 | 800 | 1,207 |
| 83 | 4,130 | 113,968 | 2,003 | 4,595 | 344 | 3,026 | 1,052 | 1,386 | 994 |
| 36 | 4,996 | 61,723 | 11,140 | 6,011 | 5,917 | 88,546 | 56,462 | 14,990 | 21,585 |
| 46 | 5,641 | 129,127 | 8,527 | 6,693 | 2,908 | 16,072 | 15,744 | 3,860 | 3,926 |
| 10 | 5,699 | 87,888 | 17,715 | 5,980 | 5,691 | 23,901 | 72,678 | 68,445 | 26,257 |
| 63 | 6,009 | 103,187 | 12,422 | 5,865 | 4,489 | 90,143 | 42,249 | 30,729 | 12,416 |
| 59 | 7,022 | 120,850 | 14,113 | 10,365 | 4,829 | 27,000 | 37,627 | 194,504 | 10,839 |
| 54 | 8,544 | 160,515 | 4,300 | 14,995 | 1,726 | 18,034 | 8,913 | 575,546 | 14,995 |
| | | 1,888,567 | 207,672 | 166,542 | 103,230 | 490,848 | 701,682 | 1,687,472 | 252,380 |

## Volume Handled by Order Buyers in 1931

| Firm No. | Number cars | Number of head | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Cattle and calves | | Calves | | Hogs | | Sheep | |
| | | Rail | Truck | Rail | Truck | Rail | Truck | Rail | Truck |
| 101 | 3,417 | 78,833 | 13,111 | Included with cattle | | 11,447 | | 33,714 | 583 |
| 102 | 2,103 | 31,518 | | | | 105,944 | | | |
| 103 | 892 | | | | | 118,415 | | | |
| 104 | 289 | 10,960 | | | | 112 | | 1,222 | |
| 105 | 29 | 3,520 | | | | 107 | | 1,566 | |
| 106 | 618 | 11,367 | | | | 43,764 | | 3,900 | |
| 107 | 570 | | | | | 87,212 | | | |
| | | 136,198 | 13,111 | | | 367,001 | | 40,402 | 583 |

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## XI. Gross Revenues

87. The respondent commission firms vary among themselves in the amount of gross revenues received from the sale of livestock consigned to them. These differences are due, for the most part, to variation in the volume of livestock received by them. Some of them, however, are attributable to a lack of uniformity in the character of business received. The livestock consigned to some firms may run heavily to one species and grade, and that of another to another species and grade.

88. The following tables show, for each firm, the gross selling and buying commissions received from Tariff No. 2 in 1929 and in 1931:

### Commission Men

| 1929 | | 1931 | |
|---|---|---|---|
| Firm No. | Amount | Firm No. | Amount |
| 33 | $1,943.52 | 37 | $1,199.90 |
| 41 | 2,228.05 | 33 | 1,522.95 |
| 72 | 3,021.40 | 72 | 1,695.05 |
| 37 | 3,115.05 | 88 | 1,832.75 |
| 66 | 3,326.40 | 11 | 1,845.15 |
| 80 | 4,658.92 | 66 | 1,983.00 |
| 86 | 6,386.20 | 67 | 2,167.55 |
| 85 | 7,023.30 | 1 | 3,000.28 |
| 11 | 7,224.28 | 9 | 5,697.96 |
| 70 | 8,204.75 | 74 | 5,923.11 |
| 78 | 8,368.25 | 79 | 7,446.88 |
| 74 | 8,523.07 | 78 | 7,563.75 |
| 67 | 9,547.92 | 61 | 7,718.13 |
| 31 | 9,697.15 | 76 | 8,097.73 |
| 61 | 10,187.30 | 19 | 8,135.30 |
| 1 | 10,317.35 | 17 | 8,421.15 |
| 76 | 10,908.58 | 87 | 8,883.96 |
| 43 | 11,246.92 | 6 | 11,888.49 |
| 6 | 11,564.97 | 82 | 14,781.04 |
| 17 | 12,195.40 | 15 | 14,911.27 |
| 23 | 14,993.86 | 30 | 15,428.75 |
| 20 | 15,271.95 | 77 | 15,927.66 |
| 8 | 15,603.20 | 75 | 16,274.93 |
| 15 | 17,024.20 | 60 | 17,078.82 |
| 5 | 17,310.60 | 43 | 17,419.88 |
| 77 | 17,657.03 | 5 | 17,556.01 |

| 1929 | | 1931 | |
|---|---|---|---|
| Firm No. | Amount | Firm No. | Amount |
| 30 | $17,971.15 | 29 | $18,286.82 |
| 60 | 19,297.77 | 16 | 18,837.50 |
| 75 | 20,710.71 | 20 | 19,581.80 |
| 16 | 22,421.33 | 7 | 20,078.27 |
| 62 | 23,139.60 | 23 | 20,792.66 |
| 4 | 23,171.64 | 26 | 21,807.77 |
| 310 29 | 23,804.71 | 4 | 22,336.53 |
| 44 | 25,014.27 | 56 | 23,193.08 |
| 48 | 25,910.35 | 62 | 23,488.44 |
| 52 | 26,038.80 | 53 | 23,881.88 |
| 7 | 26,481.24 | 65 | 25,643.59 |
| 53 | 26,770.90 | 70 | 26,391.90 |
| 70 | 27,154.97 | 48 | 27,216.03 |
| 23 | 28,775.67 | 44 | 27,679.43 |
| 56 | 30,627.34 | 34 | 29,041.10 |
| 65 | 31,275.50 | 14 | 32,208.87 |
| 26 | 31,517.40 | 25 | 36,280.93 |
| 68 | 31,603.26 | 18 | 37,283.65 |
| 34 | 31,992.53 | 42 | 39,296.66 |
| 29 | 34,325.90 | 55 | 40,949.18 |
| 14 | 37,523.95 | 71 | 41,474.09 |
| 25 | 38,382.32 | 35 | 45,007.41 |
| 18 | 42,551.14 | 12 | 45,066.81 |
| 42 | 43,228.85 | 13 | 47,563.60 |
| 55 | 50,133.21 | 73 | 51,233.80 |
| 12 | 52,653.11 | 84 | 52,999.55 |
| 71 | 53,301.19 | 51 | 64,703.22 |
| 13 | 61,483.65 | 82 | 67,812.70 |
| 84 | 61,984.59 | 83 | 68,677.60 |
| 51 | 65,065.77 | 46 | 91,216.54 |
| 73 | 72,448.32 | 36 | 99,769.35 |
| 35 | 78,374.95 | 10 | 102,078.98 |
| 10 | 90,789.27 | 62 | 104,993.75 |
| 82 | 94,938.17 | 50 | 126,036.08 |
| 36 | 118,172.84 | 54 | 154,137.19 |
| 46 | 124,217.91 | | |
| 63 | 148,516.86 | | |
| 54 | 148,669.21 | | |
| 50 | 155,381.93 | | |
| | $2,313,442.99 | | $1,911,837.81 |

Of the 65 firms listed for 1929, 11 firms received over 50 percent of the 1929 revenues; 26 firms received over 75 percent of these revenues. Of the 61 firms listed for the year 1931, 11 firms received over 50 percent of the revenues for that year; 24 firms received over 75 percent of the revenues of that year.

## XII. Methods Used by the Respondents in Getting and Maintaining Business

89. The respondents employ many different methods in their attempts to get and maintain volume of business. They vary somewhat in their opinions as to the relative value of the different business getting and maintaining activities. They are
311 practically unanimous, however, in the view that the most important factor is the rendering of the highest class of service. It is their opinion that a satisfied customer is a firm's best advertisement. Most of the respondent firms send out market letters periodically. These vary in frequency, size, and content.

They usually contain information about general market conditions and prospects for the future, and give an account of some outstanding sale made by the issuing firm. Frequently, matters of general interest to livestock producers are incorporated in these market letters. In addition to these, some of the firms get out circulars or cards giving suggestions about sorting and grading and methods of feeding and loading livestock. Members of the Live Stock Exchange are prohibited by its rules from giving presents or gifts in consideration of past or future business. This rule does not preclude the giving of articles, such as lead pencils, memorandum books, and other inexpensive advertising novelties.

90. Some of the respondents advertise in livestock journals and in the local papers in the territory from which they are accustomed to receive livestock. A local livestock market paper is published at the Kansas City market. Prior to January 1, 1930, it was the custom of many of the respondents to give free subscriptions to this paper to some of their customers. On January 1, 1930, the respondents who were members of the Exchange discontinued this custom under a rule of the Exchange which became effective on a sliding-scale basis within a period of six months. In lieu of this practice, the Exchange began a radio broadcast service, for the maintenance of which each member is charged 5¢ per car on the livestock handled. This radio broadcast is in the nature of a joint advertising venture on behalf of Exchange members.

91. Livestock salesmen carry on a considerable volume of correspondence with their customers and thus maintain contacts regarded as so necessary in the commission business. Most of the firms keep a list of customers and prospective customers. In addition to answering inquiries made by customers for market information, some of the firms, at such times as they may deem suitable, send letters dealing with market conditions which they consider of interest to their customers.

92. The respondents frequently entertain their customers, but a rule of the Exchange prohibits the giving of free meals in the West Bottoms, which is that part of the central industrial district of Kansas City in which the stockyard is located. Outside of this restriction, the amount expended for entertainment is limited only by what each firm may deem expedient in its own case. Throughout the course of the year, there are meetings and conventions of producers held in the trade territory of the Kansas City market. It has become customary for many of the respondents to send representatives to these meetings. Attendance thereon affords an opportunity to meet and talk with the producers of livestock. In addition, the respondents make special

trips to the country for the purpose of soliciting business. Members of the Exchange are prohibited by its rules from em-
312 ploying traveling or livestock solicitors. Only individual bona-fide stockholders of corporations and salesmen or buyers of livestock on the Kansas City market regularly employed in the commission business at Kansas City may solicit business for the market. Such persons cannot remain in the country on a soliciting trip more than 15 days in each month, subject, however, to certain exceptions in certain stated regions.

93. In an effort to get business, many of the respondents have undertaken the rendition of definite services incident to the marketing of livestock, but not immediately associated with the service of buying and selling livestock on a commission basis at the Kansas City market. One of these activities is commonly referred to as "appraisal" or "inspection" work. Some of the shippers, those usually having more than a carload of livestock to be marketed, request members of respondent firms, or their salesmen, to come to the country and look at their livestock. The object of the shipper in requesting this service is to get the opinion of the salesman as to whether the livestock is in condition to be marketed to best advantage and about what price it may be expected to bring. Frequently, on such visits, the salesman assists the producer in sorting his livestock and in loading it for shipment. A single shipper sometimes requests this service of more than one commission firm in order to get the benefit of the opinions of more than one salesman. These appraisal or inspection trips are made either by train or by automobile. In nearby territory it is usually done by automobile. These trips are made at the expense of the respondent firms.

94. Several sheep and cattle feeding yards are located near Kansas City, to which some shippers send their cattle and sheep to be held and fed anticipatory to marketing it either at such feed yards or at the Kansas City stockyard or some other livestock market. It is customary for the owners of such livestock to ask the commission firms to look after it. The owners often accompany it. The respondents make trips, sometimes with the owners, to these feeding yards to look over the livestock and render sundry services in connection with it, such as sorting, supervising, and feeding it and arranging for shearing of sheep and the selling of the wool, if shearing is deemed necessary. No separate charge is made for these services. At the time of the second hearing in this case, cattle and sheep were being bought and sold at some of these neighboring feeding yards. At the time of the third hearing, a considerable quantity of livestock was being bought and sold on auction markets located within the Kansas City trade territory.

95. The leasing of pasture land for the use of those customers who have cattle to graze has become an important activity for some of the respondent firms. The Kansas City market is near the Flint Hill section of Kansas and the Osage country of Oklahoma, which are extensive grazing areas. Many stockmen throughout the Southwest request their commission firms at the Kansas City market to obtain pasture for them in these grazing regions. The respondent firms that render this service make it a point to keep informed in regard to the available pas-
313 tures, in order that ready contact may be made with the owners of these grazing lands. A commission firm rendering this service goes out to inspect the pastures, in order to determine the condition of the grass, the water supply, and the character of the fences, and then reports to the customer. The commission firm also furnishes a form of pasturage contract, which is used when the owner leases the land. After the lease has been made and the owner has shipped this livestock to the pastures, a representative of the commission firm is usually present when the cattle arrive, in order to look after the interests of the owner. While the cattle are grazing, frequent trips are made by the interested commission firm for the purpose of inspecting the cattle, the condition of the grass, and the supply of water. Another inspection of the cattle generally is made before shipment to market. No separate charge is made for this service, which is rendered in the hope that the commission firm rendering it will receive the livestock for sale on the Kansas City market. It sometimes happens that this livestock is shipped elsewhere, or, if to the Kansas City market, to some other firm than the one which has rendered the service.

96. Some of the respondent firms engage in making loans on livestock. Such firms either loan their own money or negotiate loans through a bank. They may act as the endorser of livestock paper. In those cases in which they endorse the paper, the interest charged is about one percent above that which prevails in the market. This represents a charge by the commission firm for its services and for underwriting the risk involved. In connection with making loans on livestock, it is usually necessary to make an inspection of it. Most of the loans are made at the time the livestock is purchased at the market. In this event, the work of inspection does not involve a great deal of time or expense, since the details are handled by the regular office force. The respondents do not contend that the livestock loan business is a part of the commission business, but they do contend that it is a business-getting venture and that the expense incurred in con-

nection with it is one properly incurred in the conduct of the commission business.

97. The business-getting efforts of those who buy livestock on order are not so varied. They advertise in papers to some extent and make occasional trips to call upon their customers. Contact by telephone and telegraph is the principal means used by them in getting and maintaining their volume of business.

## XIII. Joint Activities of the Respondents

98. The respondent firms maintain the Kansas City Livestock Exchange, which is a voluntary organization not conducted for profit. The object of this association is to maintain uniform customs and certain standards of trade ethics, more particularly outlined in the rules formulated by it. All members of the Exchange are required to observe these uniform rules. The membership of the Exchange is composed of those who engage in the commission business at the market and such others as were once engaged in such business and who have become inactive but have retained their memberships.

314 99. At the time of the second hearing, there existed an arrangement between the member of the Exchange and the cooperative firms known as a trade practice agreement, whereby the latter two firms, by meeting certain conditions, such as the giving of bonds and agreeing to abide by certain disciplinary measures, could avail themselves of certain facilities maintained by the Exchange. The Exchange is registered as a market agency engaged in rendering certain miscellaneous services, including particularly hog inspection and dockage. It is not a respondent in this proceeding, and the reasonableness of its rates for services is not a subject of inquiry here.

100. The Exchange maintains a system of hog inspection and dockage whereby it employs men to inspect these animals for conditions of health and for certain physical conditions which may exist in some hogs, for which a deduction from the agreed price will be made. The rules of the Exchange definitely prescribe the procedure. If there is dissatisfaction with the docker's decision, an appeal may be taken to the chief inspector, whose decision is final unless an arbitration is requested. The person who calls for the arbitration is charged $1.50. A charge of 20¢ is made on each car of hogs arriving at the market for sale, and a pro-rata charge is made on truck receipts of hogs to cover the expenses of hog inspection and dockage. This charge is deducted from the proceeds of sale of hogs.

101. The Exchange maintains a clearing house which serves as a central office for the convenient handling of bills rendered and accounts collected. Each firm pays for the use of this facility according to the volume of business handled.

102. The Exchange procures and maintains a policy of insurance protecting livestock against fire while it is in the yard. One-half the premium is deducted from the proceeds of sale of livestock. Traders, packers, and order buyers also made a contribution to a fund used to maintain this insurance. The collections by the Exchange exceed the premiums, and this excess goes into the general fund.

103. The Exchange has an agricutural-development fund. Members are assessed 10¢ per car on inbound shipments, 6¢ per car on livestock bought on order, and 6¢ per car on livestock cleared through brokers. This fund is used in general promotional work, such as livestock sanitation, boys' and girls' club work, and fairs.

104. On March 1, 1930, the Exchange began making an assessment of 5¢ on each inbound car of livestock sold, to support the radio broadcasting conducted by it. This charge is made against those firms which are members of the Exchange. The Exchange also assesses each firm 2¢ per car on all inbound rail receipts to maintain its transportation department. The purpose of this department is to look after train service and the relationship of freight rates as between Kansas City and other markets.

315 105. The Exchange charges $3 per month per membership for the purpose of building up a fund to retire the certificates of membership of deceased members. This is governed by the rules of the Exchange. The Exchange has organized an independent association, composed of members of the Exchange, known as the Kansas City Live Stock Exchange Employees Association. It has the same officers as the Exchange and is founded and operated under the insurance laws of New York. Contributions to this are made on an individual basis, and the expenses of the association are borne by assessments against individual members.

## XIV. Risks Incurred in the Commission Business

106. The record in this proceeding shows the character of the risks to which the respondents are subject in the conduct of their business. These risks are of two general types: namely, those which result in losses of sufficient frequency and definiteness to make it possible for insurance companies to calculate on an actuarial basis the premiums necessary to be charged, and those which

occur so infrequently and are so indefinite in character as to make this impossible. The former class of risks is insurable, while the latter is not. Insurance premiums paid enter into the expenses of the respondents. The losses incurred on account of uninsurable risks constitute items to be provided for in the reasonable profit allowable over and above reasonable expenses. The respondents claim that these risks affect both their revenues and their expenses. Among those which affect their revenues are the possibility of decline in the production of livestock within the trade territory of Kansas City and the growth of direct buying by packers in that area. Among those risks affecting unfavorably the expenses of conducting their business the respondents enumerated the following: Their guaranty against defects in title to livestock sold by them, errors entering into accounting processes, failure of producers to make payment, losses through litigation on account of bank failures, freight undercharges, sales of diseased and defective livestock, loss or damage to livestock while in their custody, public liability, liability to employees, and loss of property through fire. Against insurable hazards most of the respondents carry some insurance. Others choose to carry this risk themselves.

107. The respondents are forced by the conditions which surround the conduct of their businesses to carry some of the risks themselves. While the livestock commission business is theoretically a cash business, it frequently happens that the respondents make remittances before they have received payment for livestock sold. If the buyer is a regularly registered agency at the market, other than a packer buyer, the payment for the livestock is guaranteed under the buyer's bond. If, however, the buyer is not bonded, there is an element of risk in a sale to such a person, in that the purchaser, for some reason, may not settle for the livestock purchased. It sometimes happens, in connection with sales of livestock to a countryman who gives his check or in case
316 of a sale to those who purchase on order, that the commission man turns over to the owner the proceeds of sale before collection is made from the purchaser. Besides this, there is also an element of risk involved in the remittance of proceeds to the shipper, in that litigation may arise in connection with the failure of a bank in which proceeds have been deposited. Other risks which may be classed as uninsurable are those arising from bad debts, errors and adjustments which cannot be avoided even by reasonable precaution, losses on account of making loans, and other items of like character. Bad debts are usually incurred in connection with loans made or credit given to those for

whom purchases are made, or the honoring of drafts drawn by shippers before livestock has been sold, the proceeds of the sale of which do not equal the amount of the draft. There is also the possibility of injury to livestock while in the custody of the commission firms, resulting from the negligence of the commission firm or its employees. Inasmuch, however, as each commission firm endeavors to render the highest class of service and handle livestock in the most humane manner, the risk of loss from this source is practically negligible.

## XV. Economic Changes Since the Year 1929

108. The rehearing granted by the Secretary to the respondents in accordance with their petition for reopening the case dated May 26, 1932, was predicated upon the allegation of the majority of the respondents in their petitions that changed economic conditions since the original test year, 1929, had rendered the experience of that year an inadequate basis for determining reasonable rates to be charged by the respondents. In addition to the testimony taken at the second hearing, further testimony was taken in a third hearing, beginning September 12, 1938, as a result of the Secretary's reopening of the proceedings. The economic changes which took place between the original hearing and the third hearing may be summarized under three general headings: (1) General changes which affected the country as a whole, (2) general changes which affected the livestock industry, and (3) particular changes which affected the respondents' businesses and the revenues which they received.

109. Beginning in the fall of 1929 and continuing into 1933, the country suffered one of the worst depressions in its history. Prices fell; salaries, wages, and corporate earnings all declined. Since 1933, there has been a halting recovery, but the economic condition of the country as a whole is still somewhat below normal.

110. The general effect of the depression on the livestock producers is reflected in the prices received for livestock. The following table gives the average prices per 100 pounds of each species of livestock within recent years:

| | 1931 | 1932 | 1933 | 1934 | 1935 | 1936 | 1937 |
|---|---|---|---|---|---|---|---|
| Beef cattle | $5.31 | $4.07 | $3.63 | $3.88 | $6.21 | $6.00 | $6.96 |
| Hogs | 3.78 | 3.36 | 3.78 | 6.07 | 9.13 | 9.44 | ..... |
| Sheep | 3.43 | 2.40 | 2.37 | 2.96 | 3.73 | 4.08 | 4.44 |

(See Respondents' Exception 10 to Examiner's Report, p. 13.)

317 111. The effect upon the respondents of these changes is revealed, to some extent, in the revenue-producing volume consigned to them. The volume received by the respondents, however, is subject also to the marketing habits and customs of producers of livestock. The following table shows the number of head of cattle and calves handled at the Kansas City market by all agencies, including those who are not respondents in this case, engaged in selling and buying livestock on a commission basis:

| Year | Cattle and calves | Hogs | Sheep |
|---|---|---|---|
| 1928 | 2,730,515 | 2,390,878 | 1,727,038 |
| 1929 | 2,721,972 | 2,488,322 | 1,810,715 |
| 1930 | 2,771,506 | 2,383,093 | 2,012,607 |
| 1931 | 2,501,213 | 1,310,514 | 1,923,134 |
| 1932 | 2,289,747 | 1,290,124 | 1,818,523 |
| 1933 | 2,099,632 | 1,813,924 | 1,480,679 |
| 1934 | 2,249,877 | 1,054,725 | 1,272,013 |
| 1935 | 2,169,743 | 580,410 | 1,220,664 |
| 1936 | 2,027,542 | 731,963 | 1,130,965 |
| 1937 | 2,075,805 | 442,833 | 1,379,999 |

(See Respondents' Exhibit A–6.)

From year to year changes take place in the livestock population in the States from which the Kansas City market draws its supplies. The record shows the cattle and calf population in the six States, the hog population in the six States, and the sheep population in the seven States from which the Kansas City market draws most of its livestock (Respondents' Exhibit A–2). It shows also an index number of the livestock population in these States (Respondents' Exhibit A–11). The following table is the index number based upon 1928 as 100 percent:

| Year | Cattle and calves in six States | Hogs in six States | Sheep in seven States |
|---|---|---|---|
| 1928 | 100.0 | 100.0 | 100.0 |
| 1929 | 99.6 | 102.6 | 109.6 |
| 1930 | 104.5 | 94.0 | 114.3 |
| 1931 | 108.3 | 86.4 | 126.0 |
| 1932 | 113.6 | 102.8 | 129.4 |
| 1933 | 123.3 | 107.5 | 130.7 |
| 1934 | 134.3 | 99.0 | 136.8 |
| 1935 | 116.0 | 54.2 | 125.5 |
| 1936 | 112.4 | 68.3 | 125.5 |
| 1937 | 110.6 | 82.5 | 140.0 |

318 112. In May 1932 the respondents filed their Tariff No. 3 to supersede their Tariff No. 2 theretofore in effect. The revenue-producing power of Tariff No. 3, when applied to the 1931 business of the respondents, is approximately 10 percent less

than that of their Tariff No. 2 when applied to the same year's business.

113. Notwithstanding the unfavorable business conditions and lowered receipts in 1931 as compared with 1929, few of the respondent firms operating in both of those years showed any substantial reduction of personnel in the former as compared with the latter. Also, few firms made any substantial reduction in salaries and wages sufficiently early in the year 1931 materially to affect their cost of doing business as shown in the audits covering that year. Such decreases as were made took place largely in the latter part of the year 1931 and in the year 1932. (See the Respondents' Exception No. 45. See also 2T, 85, 163, 216, 250, 251, 395, 396, 467, 671, 672, 673, 1001, 1572, 1573, 1994, 1995, 1996, 2289, 2290, 2754, 2965, 3078.)

## XVI. Principles Governing Determination of Reasonable Commission Rates

114. The Packers and Stockyards Act provides that whenever, after investigation and full hearing, the Secretary finds commission rates in effect at a livestock market to be unjust, unreasonable or discriminatory, he shall prescribe rates that are just, reasonable, and nondiscriminatory, or the maximum or minimum, or maximum and minimum. In arriving at such a schedule of commission rates, it is necessary to adopt a guide to reasonableness. The guide adopted in this case is that followed in the Omaha Commission Rate case and approved by the Supreme Court of the United States in the case of Tagg Bros. and Moorhead et al. vs. United States (280 U. S. 420); namely, that "commission rates yielding a reasonable profit above the normal cost of rendering the service are reasonable" (see paragraph 8 of Conclusion and Order in Packers and Stockyards Administration Docket 143.) It becomes necessary, therefore, in following this guide, to determine what are the reasonable and normal costs to the respondents in this case of handling each species of livestock.

## XVII. Cost Occasioning Factors

115. There is a relationship between those factors which occasion work for respondents and their employees and the costs to respondents of rendering the services for which they charge the rates. This relationship, however, is not so direct as to bring about an increase in cost whenever an increase in work arises. This is due to the fact that in many instances the major functions of those engaged in performing the activities of respondents

can be carried on only at at certain times. For instance, a salesman cannot sell livestock except when the market is open and more or less active, notwithstanding the volume of live-
319 stock which he has for sale. On the other hand, the type of men who make good salesmen would hardly be content to accept less salaries in consideration of short hours. They demand and get good pay and are willing to return therefor a reasonable day's and week's service. Therefore, the fact that p or to the selling hours they assist in the yards and that during the last one or two days of the week they go to the country to appraise livestock and solicit business does not increase the respondents' expenses for salaries. Therefore, in the distribution of costs hereinafter made to functional accounts, the services of a salesman, for instance, are not divided as between selling, yarding, office work, and business getting and maintaining, but are considered as being covered by the reasonable allowance for salesmanship. The same is true in principle with respect to the salaries of other workers, such as yardmen, and those who are engaged in the office.

116. The cost-occasioning factors will, as a rule, be found to consist of those activities which require the employment of a personnel in the handling of a given number of animals. Since each consignment, however large or small it may be, must be yarded, sold, weighed, and accounted for as a separate unit, the greater the number of consignments contained in each thousand of animals handled by a respondent firm, the greater will be the personnel and resultant cost required for such handling. To a less degree, the same is true with respect to the number of drafts and of owners and of account-sales to the thousand of animals handled. The accompanying table, considered in conjunction with the unit cost per firm of handling the various species of livestock according to modes of arrival, is an illustration of these facts. The accountants' analyses, hereinafter described, indicate that the greater unit costs attach to livestock coming in with species mixed in a car or in motor trucks or received as so-called "seconds" in the yard and the lesser unit costs attach to the livestock which arrives in railroad cars without species being mixed. This table shows that in the case of cattle, for instance, those coming by straight rail, single ownership, average for the market, as a whole, 45 head per owner and 45 head per account-sale, which is practically equivalent to per consignment, and 11 head per draft, whereas the mixed rail, single ownership, average only 33 head per owner and 33 head per account-sale and approximately 3 head per draft; the drive-ins average 4 head per account-sale and 4 head per owner and 2 head per draft; and the seconds average 8 head per account-sale and 8 head per owner and less

than 4 head per draft. The differences in unit costs, hereinbefore discussed, have occasioned classifications in rates based on the mode of arrival, but both the testimony of some of the respondents and the conclusions to be drawn from the analyses of the accountants lead to the further conclusion that costs do not depend upon the vehicle in which the livestock was transported to market or the company it kept on the road, but rather on the number of head contained in, the number of owners to, and the number of drafts necessary in each consignment. The table here discussed follows:

| 320 | Selling | | | | | | | | Buying | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Straight rail | | Mixed—Cattle and calves | | Mixed—All species | | Drive-ins | Seconds | Rail | Drive-outs |
| | S. O. | P. O. | S. O. | P. O. | S. O. | P. O. | | | | |
| Cattle: | | | | | | | | | | |
| Cars | 31,231 | 6,112 | 5,954 | 3,751 | 543 | 401 | | | 14,275 | |
| Decks | 31,231 | 6,112 | 5,954 | 3,751 | 543 | 401 | | | 14,275 | |
| Head | 867,253 | 180,568 | 197,086 | 122,531 | 17,138 | 12,948 | 182,764 | 105,769 | 491,041 | 24,908 |
| Drafts | 72,309 | 34,309 | 45,917 | 40,661 | 5,851 | 6,527 | 89,737 | 31,789 | 43,226 | 5,963 |
| Owners | 18,865 | 10,876 | 2,630 | 8,810 | 506 | 2,779 | 45,441 | 13,624 | 10,423 | 2,365 |
| Account sales | 18,932 | 9,950 | 2,650 | 7,284 | 509 | 2,032 | 45,441 | 13,624 | 10,423 | 2,365 |
| Head per draft | 11.96 | 5.26 | 4.29 | 3.01 | 2.93 | 1.98 | 2.04 | 3.33 | 11.36 | 4.18 |
| Head per owner | 45.97 | 16.60 | 74.93 | 13.91 | 33.86 | 4.66 | 4.02 | 7.76 | 47.11 | 10.53 |
| Head per account sale | 45.81 | 18.15 | 74.37 | 16.82 | 33.67 | 6.38 | 4.02 | 7.76 | 47.11 | 10.53 |
| Calves: | | | | | | | | | | |
| Cars | 244 | 23 | 1,168 | 592 | 106 | 87 | | | 471 | |
| Decks | 248 | 23 | 1,168 | 592 | 106 | 87 | | | 471 | |
| Head | 14,035 | 1,228 | 73,170 | 36,604 | 6,885 | 5,894 | 98,911 | 14,987 | 28,726 | 4,319 |
| Drafts | 623 | 83 | 15,421 | 12,120 | 3,119 | 3,546 | 65,503 | 5,288 | 1,373 | 1,498 |
| Owners | 151 | 30 | 2,573 | 4,770 | 294 | 2,110 | 41,010 | 1,983 | 423 | 403 |
| Account sales | 151 | 26 | 2,581 | 4,109 | 295 | 1,311 | 41,010 | 1,983 | 423 | 403 |
| Head per draft | 22.52 | 14.79 | 4.74 | 3.02 | 2.21 | 1.66 | 1.51 | 2.83 | 20.92 | 2.94 |
| Head per owner | 92.95 | 40.93 | 28.43 | 7.67 | 23.42 | 2.79 | 2.41 | 7.55 | 67.91 | 10.72 |
| Head per account sale | 92.95 | 47.23 | 28.35 | 8.91 | 23.34 | 4.50 | 2.41 | 7.55 | 67.91 | 10.72 |
| Hogs: | | | | | | | | | | |
| Cars | 3,145 | 1,119 | | | 748 | 634 | | | 473 | |
| Decks | 3,266 | 1,150 | | | 750 | 647 | | | 722 | |
| Head | 235,335 | 83,875 | | | 55,371 | 49,388 | 678,156 | 84,673 | 65,579 | 25,526 |
| Drafts | 12,849 | 9,328 | | | 6,007 | 8,476 | 89,095 | 5,842 | 1,569 | 994 |
| Owners | 3,007 | 5,488 | | | 529 | 5,123 | 59,587 | 3,710 | 407 | 489 |
| Account sales | 3,006 | 4,969 | | | 531 | 4,072 | 59,587 | 3,710 | 407 | 489 |
| Head per draft | 18.32 | 8.99 | | | 9.26 | 5.83 | 7.61 | 14.49 | 41.80 | 23.67 |
| Head per owner | 78.26 | 15.28 | | | 105.24 | 9.64 | 11.38 | 22.82 | 161.12 | 48.11 |
| Head per account sale | 78.28 | 16.87 | | | 104.84 | 12.13 | 11.38 | 22.82 | 161.12 | 48.11 |
| Sheep: | | | | | | | | | | |
| Cars | 5,481 | 820 | | | 48 | 23 | | | 455 | |
| Decks | 10,481 | 1,491 | | | 49 | 24 | | | 802 | |
| Head | 1,371,805 | 192,452 | | | 6,481 | 3,399 | 243,474 | 2,154 | 113,335 | 8,906 |
| Drafts | 10,680 | 4,699 | | | 479 | 374 | 29,674 | 112 | 376 | 345 |
| Owners | 3,225 | 2,243 | | | 59 | 205 | 16,633 | 68 | 372 | 229 |
| Account sales | 3,221 | 1,627 | | | 59 | 133 | 16,626 | 68 | 372 | 224 |
| Head per draft | 128.44 | 40.95 | | | 13.53 | 9.09 | 8.20 | 19.23 | 129.37 | 25.81 |
| Head per owner | 426.37 | 85.80 | | | 109.84 | 16.58 | 14.64 | 31.67 | 304.66 | 38.89 |
| Head per account sale | 425.89 | 118.28 | | | 109.84 | 25.55 | 14.64 | 31.67 | 304.66 | 38.89 |

321 XVIII. Preparation for the Determination of Costs

117. In preparation for the determination of costs in this matter, the Government caused to be made an audit of the business done by each respective respondent firm (including corporate and individual respondents) during the year 1929 and, when a rehearing had been granted, caused to be made similar audits covering the year 1931. These audits were made by trained and experienced accountants, under the supervision of a chief accountant, from the books and records of the respondents. In each instance, the year chosen was the last complete calendar year preceding the hearing. The marketing of livestock at Kansas City is such as to render the full calendar year the fairest accounting period.

118. While in preparation for the first and the second hearings it was only practicable to audit the businesses for one calendar year, much information concerning the conditions which affect the respondents' businesses and covering a period of many years was obtained and placed in the record. During the course of the third hearing, additional general information with respect to respondents' businesses up to January 1, 1938, was also introduced.

119. The rates hereinafter prescribed as reasonable affect each of the respondent agencies individually. Hence, the individual experience of each respondent has been considered, and the unit cost to each respondent on account of the various categories of services rendered by it has been set forth.

120. From those audits, the Government's chief accountant prepared for the year 1929 a functional cost analysis on a unit basis; that is to say, the audits and auxiliary data indicated the allocation directly to each species of livestock of a large percentage of the total cost incurred by each respondent firm. The remaining cost, which could not be allocated directly, was distributed by the accountant on what he considered appropriate bases.

121. He made a similar analysis covering the year 1931 and, for that year also, a further analysis, commonly called a "differential study," whereby he broke down the total cost per function and per species and distributed it over the various modes of arrival within each species for each particular firm, to the end that he might discover, for instance, how much it cost a particular firm to yard a hog arriving by motor truck as distinguished from the cost to the same firm for yarding a hog which came in by rail.

122. In preparation for both the first and the second hearing, the great majority of the respondents employed a trained and experienced accountant, who prepared for each of the years 1929 and 1931 analyses similar in purpose to those above described as having been made by the Government accountant and based them on the same audits. At the first hearing, the account-
322 ants for the Government and for the respondents, respectively, were in disagreement as to the bases to be used in making indirect allocations or distributions of costs, such as administrative and general expenses, but at the second hearing respondents' accountant, while not endorsing the bases employed by the Government's accountant, did not regard it as worth while to controvert them. In preparation for the third hearing, no audit was made of the books of the individual respondents.

## XIX. Items Entering Into Costs

123. Each of the accountants, in making his analysis of the ousiness of the respondents, established a classification of expenses and assigned to it certain items. The classifications are as follows:

Government Accountant:
- Salaries:
  - Selling and Buying.
  - Yarding.
  - Business Getting and Maintaining.
  - Office.
  - Administrative.
- Expenses:
  - Yarding.
  - Office.
  - Business Getting and Maintaining.
  - Administrative and General.
  - Risk.

Respondents' Accountant:
- Salaries and Wages:
  - Selling and Buying.
  - Yarding.
  - Business Getting and Maintaining.
  - Office.
  - General Supervision.
- Expenses:
  - Yarding.
  - Selling and Buying (Horse Expenses).
  - Office.
  - Business Getting and Maintaining.
  - Administrative and General.
  - Risk.
  - Commissions Paid (Split Commissions).*

* This item, "Commissions Paid (Split Commissions)," is included by the Government as a part of the item "Selling and Buying Salaries."

| Respondents' Acc'tant—Con. | Gov't Accountant—Con. |
|---|---|
| Interest on Following Capital: | Interest on Following Capital: |
| Fixed Assets (Including Exchange Memberships). | Fixed Assets (Including Exchange Memberships). |
| Working Capital to Cover: | Working Capital to Cover: |
| Operating Expenses. | Operating Expenses and Handling Sales and Purchases. |
| | Investment in Methods and Practices. |

124. It will be observed that, with respect to the items of cost as distinguished from the method of arriving at the amounts of those items, the two accountants were in substantial agreement, except that the respondents' accountant includes an item for interest on working capital necessary to handle sales and purchases, and he also includes an item of interest on capital invested in methods and practices. Neither of these items is covered by the classification made by the Government accountant. Hereinafter, in de-
323 termining reasonable costs, an allowance is made to cover each and every item common to the classifications on the two accountants; also, similarly, an allowance is made to cover interest on working capital necessary in handling sales and purchases. The methods and practices, the value of which is contended for by respondents as an element of capital, are classified by their accountant under three heads: namely, (1) mailing lists and customer records; (2) office methods, systems, etc.; and (3) yard methods and practices.

125. The mailing lists and customer records comprise, principally, all the names and addresses of those who have patronized and are believed to be still in position to patronize the respective respondent firms who keep the lists. To a lesser extent they contain some names and addresses of those who have not yet patronized the firm keeping the list. These data are acquired and recorded as a part of the normal and usual conduct of respondents' businesses. They are kept on a card or some similar form of record. Such records constitute a part of the property of the respective respondents who keep them. Therefore, their respective values, such as they may hereafter be found to be, are included as a part of respondents' invested capital.

126. The other matters listed as methods and practices constitute those common day-by-day routines used in the conduct of the

respondents' businesses, such as the methods of yarding, sorting, selling, and weighing livestock in the yard and the practices of making out and transmitting account of sales to the patrons, remitting the proceeds of sale, and keeping records and other similar matters in the office. The respondents' theory is that if no such routines had been used by anyone anywhere and the respondents were compelled to employ persons to work them out, costs would be incurred in the discovery of them and further costs in the learning of them by the respondents and their employees. Their accountant has arrived at some $66,000 as the total of such costs. These are apportioned among the various firms he represents. The respondents contend that the amounts apportioned to their respective firms should be regarded for rate-making purposes as a part of the capital of such firms, interest on which, they say, should be included in the reasonable costs.

127. These items, namely, value of office methods and customs and value of yard methods and practices, are not included in the respondents' capital, a return on which is coverable into reasonable rates. The reasons for not including them are as follows:

128. They, like the common routines of everyday life generally, while very useful and practically indispensable, are not the property of anyone. They freely may be adopted and used by all who care to do so without the payment of any price or remuneration to any of the respondents in this proceeding. Knowledge of them is a part of the qualifications of the respondents' various
324 classes of workers, whether they be owners or employees. They are, in general, learned while the worker is engaged upon and performing other duties for which he is being adequately compensated. When, hereinafter, an allowance is made to cover the salaries of yardmen, salesmen, office workers, etc., it is not contemplated that it would be just or reasonable to cover into the rates such salaries to be paid to men who were not acquainted with the common routines necessary in the performance of their work.

## XX. Reasonable Unit Costs Plus Reasonable Unit Profits To Be Covered Into Reasonable Commission Rates

129. There are more firms and a larger personnel on the Kansas City market than are necessary to dispose of shippers' livestock effectively. A smaller number of firms than are engaged could handle the business more economically (1T, 467, 524, 811–821, 5216, and 2T, 455, 485, 772, 773). The Packers and Stockyards Act does not clothe the Secretary of Agriculture with authority to determine how many firms would be required to handle the business properly or what specific firms should be engaged in business or whether some firms are unwisely continuing in business. The

Act directs him to prescribe reasonable rates. In order to do this, some reasonable standard must be adopted. That adopted herein has already been stated in paragraph 114. In applying this standard, it is necessary for the rate maker to inform himself with respect to whether each of the respondent firms is conducting its business economically to the end that the schedule of rates prescribed may not pass unnecessary expenses on to those who pay the rates.

130. Commission rate making is a matter of the exercise of well-informed judgment, guided by mathematical calculation. The importance of statistics and cost of operation of each of the respondents lies in the fact that they are a guide to judgment. In arriving at a reasonable allowance to cover the cost of separate functions, the experience of each firm is considered separately. The use of the mathematical average cost of all firms doing business as a test of reasonableness of rates would carry into the rates, through the aggregate used in arriving at the average, all the unreasonable and extravagant expenditures, if any, incurred under the rates already in existence. Moreover, the unit costs of many of the firms are high because the volume of business coming to the market is divided among too many firms and handled by an unnecessarily large personnel. To consider as reasonable the average of the unit costs so incurred would compel the maintenance, at the expense of the rate payer, of all who wish to engage in the business, even though the volume of business they can command be too small to warrant the organization necessary to handle it. In this connection, it is to be observed that while, for example, one salesman may be able to sell 30,000 head of cattle received by one firm, yet if the same volume be divided be-
325 tween two firms, two salesmen will be required. As a test of the reasonableness of rates, the adoption of the lowest costs incurred on account of the various items by the most economically conducted firm would result in a schedule so low as manifestly to be unreasonable as to some firms of normal efficiency. The adoption of the highest costs on account of these items incurred by the least efficiently managed firms would result in a schedule so high as to be unfair to all shippers of livestock. This same situation obtains with respect to any functional item of expense incurred by any one firm. Since neither the average unit cost of all firms nor the experience of the most efficient firms, nor that of the most inefficient firms, can be taken as a guide to the establishment of rates, some other method of analysis must be adopted.

131. In general, the expenses incurred by commission firms fall into two classes: First, those which the conditions of the business tend to hold down, and, second, those which the conditions tend

to increase. In arriving at a reasonable cost to be covered into rates in the case of those functions the expenses of which are automatically held down, the costs as actually incurred by each of the firms should be considered and the reasonable cost arrived at, giving due consideration to the circumstances under which each of the respondents operates. In case of those costs which the conditions of the business tend to increase, such as the cost of salesmanship and the cost of advertising, expenses as actually incurred by any firm or by all of the firms do not furnish an adequate guide to the reasonableness of such cost. In arriving at a reasonable unit cost on account of these functions, some additional procedure of approach has to be adopted. That used is discussed hereinafter in those paragraphs wherein the reasonable allowance is determined. The various functional unit items of costs, the findings as to the reasonable allowance for the various functions, and the reasoning employed in arriving at the findings are set forth in the following paragraphs.

131–a. Consideration has been given to the unit cost determinations prepared by the accountant for the Government and those employed by the respondents. These studies are informative but cannot be accepted as conclusive as to the unit cost to be used here in arriving at reasonable unit cost. They were prepared in anticipation of the hearing in these cases. Upon consideration of the evidence in the case relating to the operating conditions of the business of the respondents, it is found that the unit cost determination should be modified. The differential cost study prepared by the Government accountant was based upon the various categories of business as recognized in Tariff No. 2, the structure of which was radically different from the tariff which the respondents filed to become effective on May 23, 1932. Consequently, the unit cost figures in that study cannot be used here. In the preparation of functional cost study, the Government accountant distributed the time of employees upon the basis of a questionnaire, a copy of which was given to some officer or
326 employee of each firm for the purpose of having a distribution made of each individual's time to the different functions. While each owner and employee has a rather definite function to perform in connection with the firm, he frequently assists in the performance of other duties when he is not engaged in his regular activities. For example, a salesman may assist a yardman early in the morning before the selling of livestock begins, or a yardman may, on occasions, sell a few head of livestock. In furnishing the information called for in the questionnaire, the percentage of time devoted to those different functions was estimated, and, accordingly, the accountant for the Government allocated a proportionate part of the salaries to the various func-

tions. In view of the nature of the business, a certain degree of flexibility prevails with respect to the hours of work of owners and employees in the conduct of this business. A salesman, as a part of his regular duties, may do some yard work and some office work. Usually he does some soliciting at times when he is not regularly engaged in his duties at the market. These are functions which are recognized as being incidental to his main function of salesmanship. Under such circumstances, the attempt to allocate his time tends to distort the picture with respect to functional unit cost. It is found that the unit cost figures to be used in making a determination of reasonable unit cost should be based upon the classification of the yarding and office salaries according to the main duty performed by each class of employees.

### Salesmanship

132. An important item to be included in reasonable unit costs is a reasonable amount for salesmanship. This function is performed on the Kansas City market by owners of market agencies and by salesmen employed by them on a salary basis. Each of the accountants found unit costs of this item per species of livestock and also according to the respective modes of arrival.

133. Inasmuch as the selling and buying of livestock requires greater skill and judgment than the performance of any other of the respondents' functional activities, with the possible exception of management, the proportion of owners, as distinguished from employees, engaged in this activity is large. In some firms, such owners agreed upon salaries which should be set up on the books for each and paid if the net result of operations made it possible so to do. In others, the owners had merely drawing accounts with division of net owner incomes at the end of a year or some other accounting period. In still others, the owners merely divided whatever net owner income happened to arise from the operation. By "net owner income" is meant moneys arising from the operation of the business and available for the personal use of the respective owners, regardless of whether it be considered as compensation for services rendered or profits arising from the ownership of the business or a combination of the two.

134. While the accountant for the Government used, in ascertaining the unit costs of salesmanship, the salaries, drawing accounts, and profits of owner salesmen, as well as the
327 salaries of those who were employed, he neither attempted to pass upon the reasonableness of such salaries, drawing accounts, or profits of the owner salesmen nor recommended the inclusion of those of the owners in the costs which are to be used as the basis of reasonable rates. In this proceeding, it is not con-

tended by anyone that these owner salaries, drawing accounts, or profits should be used as an element of costs. When, however, they are eliminated, and nothing substituted, it causes the salesmanship costs of so many firms to appear extremely low or to be absent altogether, so that no fair normal can be garnered from the unit costs of the remaining firms for this item. In these circumstances, the question becomes one of determining the amounts to be substituted. The record in this proceeding suggests alternative methods. The respondents contend that there should be considered an amount representing the personal value of each owner worker as appraised by a committee selected by the respondents. Government counsel argues that the unit cost of salesmanship should be ascertained by relating a reasonable annual salary for a salesman to a reasonable year's performance expressed in terms of the units sold—that is, carloads or head, as the case may be—as was done in Docket 143, the Omaha Commission Rate case (see Tagg Bros. and Moorhead vs. United States, 280 U. S. 420), and in every commission rate order issued by the Secretary of Agriculture since that time.

135. In preparation for a hearing in 1929 and again prior to that of 1931, the respondents had an appraisal of the owner workers made by a committee. The committee which made the appraisal in 1929 consisted of six members, and that making the one of 1931 of eight members. These committees had before them the following classes of information: enterprise with which connected, office held or position occupied, number of active copartners, proportion of personal time involved, manner in which such time employed and proportion devoted to various activities, term of experience in livestock commission business, term of experience in livestock industry, commissions earned by the enterprise, cash value of sales and purchases made to earn such commissions, and the number of head of livestock handled by species and in total. These committees did not possess any peculiar qualifications for making this appraisal. Even if the appraisal of services such as these could be considered as a matter determinable by expert opinion, any generally well-informed citizen, with the information at his disposal which the committees had before them, could make an appraisal as trustworthy as that made by the committees. The performance method urged by Government counsel places no limit, either by way of maximum or minimum, upon the amount of annual compensation which an owner salesman may earn. It finds a reasonable compensation to the respondents for the performance of a unit of salesmanship, whether it be done by owner or employee, and leaves the firm in position to expand or contract its revenue as it proves successful or unsuc-

cessful in multiplying the units of salesmanship performed. It is found that the associating and the relating of a reasonable year's sales performance with a reasonable year's compensation for the selling done results in a unit cost on account of selling which it is reasonable to cover into rates on account of this function.

328 136. The record in this case contains all the information which the committees had before them, and in addition, many other facts pertinent to the determination of the cost of such services as are performed by owners, among which are the prices at which services such as those rendered by the owners are being bought and sold for on an open, competitive market. Such prices are the test generally regarded as proper measures. The record contains some facts which furnish a partial test of the appraisals. Some of the owners whose services in their respective businesses were appraised by the committee in 1929 later became employees on a salary basis at figures much below those at which their services were appraised.

137. The evidence shows that an important element influencing the value placed by these committees upon the services of owners was the business-drawing power of the owners. These appraisals include also elements on account of risk-bearing and executive functions exercised by the owners. All these elements are considered elsewhere and a reasonable allowance made for them in the determination of reasonable unit costs. (See paragraphs 150, 155, 159, 163, infra.)

138. Since neither owners' salaries, as set up on the books, nor the appraised value of owners' services can be accepted as determinative of the unit costs of salesmanship, some other method must be adopted. That here used is the ascertainment of what the salesmen's services are selling for and relating these to what, according to the record, constitutes a reasonable year's work. The salesmanship to be provided for in this order contemplates that it will be of high character, whether performed by owners or by salesmen employed by them. The shipper is entitled to have his livestock sold by the most efficient and competent salesmen available on the market. Such salesmen, whether owners or employees, are entitled to receive a fair reward for their ability and services. An owner, while entitled to reasonable remuneration for management and the assumption of risk, which are ordinarily referred to as profit, is not entitled, merely because he is an owner, to more for the act of selling livestock than it would cost to employ some other equally efficient salesman to perform the selling service.

329 139. The salary schedule of employed cattle and calf sales-

men and buyers in 1929, presumably arrived at by arm's-length bargaining, arrayed in descending order, was as follows (Government's Exhibits 15, pp. 121–123, and 14–1, 14–2, etc.).

| | | | |
|---|---|---|---|
| $12,000.00[1] | $3,600.00 | $2,847.70* | $1,980.00 |
| 10,546.95 | 3,600.00 | 2,800.00 | 1,980.00 |
| 8,500.00 | 3,600.00 | 2,720.00 | 1,980.00* |
| 7,000.00 | 3,600.00* | 2,700.00 | 1,975.00 |
| 6,624.00* | 3,600.00 | 2,700.00 | 1,950.00 |
| 6,000.00 | 3,600.00 | 2,550.00 | 1,939.92* |
| 5,760.00 | 3,600.00 | 2,529.00 | 1,920.00 |
| 5,760.00 | 3,600.00* | 2,478.00 | 1,875.00 |
| 5,400.00 | 3,500.00 | 2,465.00 | 1,860.00 |
| 4,805.00 | 3,500.00 | 2,425.00 | 1,800.00 |
| 4,800.00 | 3,300.00 | 2,420.00 | 1,800.00 |
| 4,800.00 | 3,300.00 | 2,400.00 | 1,800.00 |
| 4,800.00 | 3,250.00 | 2,400.00 | 1,800.00* |
| 4,500.00 | 3,200.00* | 2,400.00 | 1,800.00 |
| 4,388.52* | 3,170.00 | 2,400.00 | 1,800.00* |
| 4,220.00 | 3,120.00 | 2,400.00 | 1,800.00 |
| 4,200.00 | 3,100.00* | 2,400.00 | 1,684.69 |
| 4,200.00 | 3,005.00 | 2,400.00 | 1,657.20* |
| 4,200.00 | 3,000.00 | 2,400.00* | 1,650.00 |
| 4,200.00 | 3,000.00 | 2,335.00 | 1,600.00 |
| 4,020.00 | 3,000.00 | 2,314.84 | 1,560.00 |
| 4,000.00 | 3,000.00 | 2,280.00 | 1,500.00 |
| 3,960.00* | 3,000.00 | 2,280.00 | 1,500.00 |
| 3,920.00 | 3,000.00 | 2,250.00 | 1,500.00 |
| 3,900.00 | 3,000.00 | 2,220.00 | 1,480.00 |
| 3,789.25 | 3,000.00 | 2,220.00 | 1,399.92* |
| 3,750.00 | 3,000.00 | 2,208.00* | 1,300.00 |
| 3,650.00 | 3,000.00 | 2,100.00* | 1,200.00* |
| 3,620.00 | 3,000.00 | 2,100.00 | 1,200.00* |
| | 3,000.00 | 2,100.00 | 1,200.00* |
| | | 2,075.00 | 1,200.00 |
| | | 2,028.47 | 1,200.00 |

[1] The individual who drew this salary is a cattle salesman by profession, but is the general manager of one of the largest firms on the market and spends most of his time in performing his managerial duties.

*Indicates that the individual worked part time and that his monthly salary was multiplied by 12 to arrive at his annual rate of pay.

330 The salary schedule of cattle and calf salesmen and buyers in 1931, arrayed in descending order, was as follows (Govt. Ex. 114-1, 114-2, etc.):

| | | | |
|---|---|---|---|
| $8,500.00 | $3,450.00 | $2,610.00 | $1,987.50 |
| 7,500.00 | 3,450.00 | 2,598.50 | 1,980.00 |
| 7,187.50 | 3,426.00 | 2,550.00* | 1,925.00 |
| 6,000.00 | 3,353.39 | 2,532.00* | 1,908.00 |
| 5,875.00 | 3,315.00 | 2,500.00 | 1,850.00 |
| 5,832.00 | 3,312.00* | 2,500.00 | 1,800.00* |
| 5,760.00 | 3,300.00 | 2,600.00 | 1,800.00 |
| 5,760.00 | 3,300.00* | 2,425.50 | 1,800.00 |
| 4,800.00* | 3,240.00* | 2,400.00 | 1,800.00 |
| 4,620.00 | 3,166.60 | 2,400.00* | 1,800.00 |
| 4,500.00 | 3,150.00 | 2,400.00 | 1,800.00 |
| 4,380.00* | 3,038.75 | 2,400.00 | 1,770.00 |
| 4,200.00 | 3,000.00* | 2,400.00 | 1,650.00 |
| 4,200.00 | 3,000.00* | 2,400.00 | 1,600.00 |
| 4,042.50 | 3,000.00* | 2,400.00 | 1,530.00 |
| 4,025.00 | 3,000.00 | 2,400.00 | 1,500.00* |
| 4,002.50 | 3,000.00 | 2,400.00 | 1,500.00 |
| 3,986.44 | 3,000.00* | 2,400.00 | 1,500.00 |
| 3,962.50 | 3,000.00 | 2,400.00 | 1,500.00* |
| 3,900.00 | 3,000.00 | 2,400.00* | 1,500.00* |
| 3,780.00 | 3,000.00* | 2,400.00 | 1,437.50 |
| 3,766.66 | 2,887.50 | 2,340.00* | 1,350.00 |
| 3,750.00 | 2,775.00 | 2,328.00 | 1,350.00 |
| 3,750.00 | 2,775.00 | 2,300.00 | 1,300.00 |
| 3,650.00 | 2,751.00 | 2,300.00 | 1,292.95 |
| 3,600.00* | 2,750.00 | 2,300.00 | 1,275.00 |
| 3,600.00 | 2,700.00 | 2,300.00 | 1,272.00* |
| 3,600.00* | 2,700.00 | 2,262.50 | 1,225.00 |
| 3,600.00 | 2,700.00* | 2,256.00* | 1,200.00* |
| | | 2,232.50 | 1,200.00 |
| | | 2,220.00 | 1,200.00* |
| | | 2,220.00 | 1,200.00 |
| | | 2,200.00 | 1,200.00 |
| | | 2,187.50 | |
| | | 2,100.00* | |
| | | 2,100.00 | |
| | | 2,100.50 | |
| | | 2,100.00 | |
| | | 2,088.80 | |
| | | 2,075.00 | |
| | | 2,040.00 | |
| | | 2,025.00 | |
| | | 2,010.00* | |
| | | 2,010.00* | |
| | | 2,000.00 | |

*See note above.

331 The salary schedules of employed hog salesmen and buyers for 1929 (see Government's Exhibit 15, p. 124) and for 1931 (see Government's Exhibits 114–1, 114–2, etc., and 115) were as follows:

| 1929 | 1931 |
|---|---|
| $9,300.00 | $8,800.00 |
| 4,800.00 | 5,095.43 |
| 4,000.00 | 3,900.00 |
| 3,900.00 | 3,900.00* |
| 3,900.00 | 3,600.00 |
| 3,750.00 | 3,300.00 |
| 3,600.00 | 3,000.00* |
| 3,600.00 | 2,990.00 |
| 3,500.00 | 2,932.50 |
| 3,300.00 | 2,900.00 |
| 3,140.00 | 2,880.00 |
| 3,000.00 | 2,812.00 |
| 3,000.00 | 2,520.00* |
| 2,700.00 | 2,500.00* |
| 2,700.00 | 2,500.00 |
| 2,700.00 | 2,475.50 |
| 2,700.00 | 2,400.00 |
| 2,640.00 | 2,400.00 |
| 2,405.00 | 2,400.00 |
| 2,400.00 | 2,325.00* |
| 2,400.00 | 2,200.00 |
| 2,400.00 | 2,200.00 |
| 2,400.00 | 2,194.50 |
| 2,302.00 | 2,168.00* |
| 2,160.00 | 2,160.00 |
| 2,125.00 | 2,100.00 |
| 2,100.00 | 2,100.00 |
| 2,100.00 | 2,100.00 |
| 2,100.00* | 1,999.92 |
| 1,872.00* | 1,930.00 |
| 1,810.00 | 1,960.00* |
| 1,800.00 | 1,800.00 |
| 1,800.00 | 1,800.00 |
| 1,800.00 | 1,800.00 |
| 1,740.00 | 1,800.00* |
| 1,650.00 | 1,800.00 |
| 1,575.00 | 1,680.00 |
| 1,501.08* | 1,470.00 |
| 1,500.00 | 1,350.00 |
| 1,300.00 | 1,250.00 |
| 1,200.00 | 1,202.55* |
| 1,200.00 | 1,200.00 |
| | 1,200.00 |
| | 1,200.00 |
| | 960.00* |
| | 692.28* |
| | 535.04* |

*See note above.

332 The salary schedules of employed sheep salesmen for 1929 (see Government's Exhibit 15, p. 125) and for 1931 (see Government's Exhibits 114–1, 114–2, etc., and 115) were as follows:

| 1929 | 1931 |
|---|---|
| $7,000.00 | $7,000.00 |
| 4,970.00 | 4,887.50 |
| 4,800.00 | 3,533.32 |
| 3,305.00 | 3,000.00 |
| 3,300.00 | 2,937.50 |
| 3,000.00 | 2,920.00 |
| 3,000.00 | 2,587.50 |
| 2,670.00 | 2,310.00 |
| 2,423.50 | 2,100.00 |
| 2,280.00 | 2,100.00* |
| 1,800.00 | 1,800.00 |
| | 1,800.00 |
| | 1,800.00 |
| | 1,208.00* |

*See note above.

The record does not show the salaries received in 1937 by all employed salesmen. It does show, however, the salaries of those who were employed in 1937 by the same firm as in 1931, all salaries being equated to an annual basis (Respondents' Exhibit A–13). A comparison of salaries drawn in 1937 with those drawn by the same individuals in 1931 is as follows:

| Cattle | | | | | | | | Hog | | Sheep | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Salesmen | | Buyers | | Buyers and salesmen | | Salesman and manager | | Salesmen | | Salesmen | |
| 1931 | 1937 | 1931 | 1937 | 1931 | 1937 | 1931 | 1937 | 1931 | 1937 | 1931 | 1937 |
| $1,800 | $1,200 | $2,220 | $1,295 | $1,800 | $896 | $12,000 | $8,262 | $2,400 | $1,018 | $7,000 | $4,824 |
| 3,315 | 1,692 | 1,500 | 442 | 2,700 | 2,040 | | | 1,200 | 1,200 | 1,920 | 1,885 |
| 1,800 | 1,511 | 3,167 | 1,650 | 2,100 | 2,396 | | | 2,200 | 1,080 | 4,886 | 4,810 |
| 1,445 | 1,151 | 5,760 | 4,268 | | | | | 4,750 | 1,250 | 2,013 | 2,410 |
| 2,400 | 1,467 | 5,760 | 3,966 | | | | | 2,900 | 1,800 | | |
| 2,109 | 1,500 | 2,300 | 1,450 | | | | | 1,200 | 720 | | |
| 2,400 | 2,100 | 4,025 | 2,410 | | | | | 2,100 | 1,400 | | |
| 4,200 | 3,000 | 2,750 | 1,891 | | | | | 2,160 | 1,920 | | |
| 2,100 | 1,400 | 3,039 | 2,079 | | | | | 2,400 | 1,800 | | |
| 1,380 | 1,000 | | | | | | | 2,900 | 1,978 | | |
| 8,500 | 5,856 | | | | | | | 2,812 | 1,318 | | |
| 6,000 | 4,134 | | | | | | | 1,350 | 840 | | |
| 3,600 | 1,725 | | | | | | | 2,100 | 2,342 | | |
| 1,800 | 1,875 | | | | | | | 2,500 | 1,800 | | |
| 2,200 | 2,400 | | | | | | | 2,325 | 840 | | |
| 7,188 | 9,790 | | | | | | | | | | |
| 3,480 | 1,980 | | | | | | | | | | |
| 4,002 | 4,610 | | | | | | | | | | |
| 2,283 | 2,280 | | | | | | | | | | |
| 8,050 | 2,846 | | | | | | | | | | |
| 3,000 | 1,916 | | | | | | | | | | |
| 1,800 | 2,040 | | | | | | | | | | |
| 3,333 | 4,200 | | | | | | | | | | |
| 2,800 | 1,800 | | | | | | | | | | |
| 2,283 | 1,980 | | | | | | | | | | |
| 1,800 | 1,650 | | | | | | | | | | |

333 These schedules show that there was, in general, a decline in salaries from 1929 to 1937.

140. The salaries set forth in the schedules in paragraph 139 are those drawn by the various nonowner employed salesmen and buyers. These workers of the respondent firms do not keep a record of the number of head of livestock sold by each individual. In those few firms in which only one salesman performs the salesmanship of a given species, the amount of selling done by that firm cannot be attributed solely to him, for the reason that it is a custom of the market for one salesman to do his own selling and that of another when it is necessary for the latter to be away from the market. It is not possible, therefore, to determine the exact amount of work done by any individual salesman or buyer. The record contains information which make it possible to exercise a reliable judgment with respect to the number of head of a given species which it is reasonable to use in association with a reasonable salary in arriving at the reasonable per-head cost of salesmanship. The information on which such a judgment may rest is: (1) the opinion of competent witnesses as to the number of animals of a species which a good and experienced salesman of that species can sell on the Kansas City market under conditions as they prevail from day to day, from week to week, and from month to month; and (2) the average performance per salesman and buyer actually doing selling and buying on the market. Both types of information serve as guides to judgment. A salesman employed by one of the respondents testified that a good salesman should sell 1,500 cars of cattle in a year. Another witness employed by a respondent stated that a good salesman can sell well as much as 2,000 cars per year. Another, a respondent, stated that a butcher salesman could sell 1,500 cars of butcher stuff in a year, and should be able to sell that many cars of steers. He stated also that a hog salesman should sell more than 1,500 cars of hogs, and that a sheep salesman should sell from 1,500 to 2,000 cars of sheep. On one day during the first hearing, a salesman who is a member of one of the respondent firms sold about 30 cars of cattle, most of which had been carried over from the previous day on account of an unsatisfactory market. It is the opinion of some of the salesmen that they could sell more livestock than they do sell if they had the opportunity to exercise fully their selling ability. The following tables show, as to each species, the average number of head, per salesman and buyer, of

that species sold and bought by the salesmen and buyers of the various firms:

| | 1929 Cattle and Calves (Government's Exhibit 15, pp. 115–116) | | 1931 Cattle and Calves (Government's Exhibits 114–1, 114–2, etc., and 115) | |
|---|---|---|---|---|
| | 24, 912 | 10, 920 | 27, 791 | 10, 340 |
| | 22, 240 | 10, 680 | 18, 994 | 9, 742 |
| | 21, 693 | 10, 655 | 18, 549 | 9, 577 |
| | 21, 676 | 10, 555 | 18, 438 | 9, 519 |
| | 21, 612 | 10, 545 | 17, 823 | 9, 416 |
| | 19, 872 | 10, 378 | 17, 029 | 8, 808 |
| | 19, 552 | 10, 277 | 16, 987 | 8, 735 |
| | 19, 469 | 10, 211 | 16, 197 | 8, 527 |
| 334 | 19, 212 | 9, 648 | 16, 119 | 8, 080 |
| | 17, 987 | 9, 269 | 15, 743 | 7, 895 |
| | 17, 827 | 8, 993 | 15, 017 | 7, 812 |
| | 17, 706 | 8, 308 | 13, 836 | 7, 812 |
| | 16, 823 | 8, 111 | 13, 806 | 7, 491 |
| | 16, 528 | 7, 544 | 13, 522 | 7, 321 |
| | 16, 334 | 7, 542 | 13, 503 | 6, 668 |
| | 16, 269 | 6, 812 | 13, 169 | 6, 402 |
| | 15, 373 | 6, 782 | 13, 117 | 6, 133 |
| | 14, 346 | 6, 666 | 13, 005 | 5, 680 |
| | 13, 882 | 6, 637 | 12, 789 | 5, 410 |
| | 13, 173 | 6, 414 | 12, 053 | 5, 365 |
| | 13, 113 | 6, 390 | 11, 336 | 4, 678 |
| | 12, 424 | 6, 160 | 11, 223 | 4, 507 |
| | 12, 203 | 5, 841 | 10, 590 | 4, 375 |
| | 12, 003 | 5, 540 | 10, 586 | 4, 244 |
| | 11, 885 | 4, 442 | 10, 513 | 3, 656 |
| | 11, 693 | 4, 270 | 10, 341 | 3, 206 |
| | 11, 632 | 4, 223 | | 2, 397 |
| | 11, 346 | 3, 732 | | |
| | 11, 013 | 3, 149 | | |

| 1929 Hogs (Government's Exhibit 15, pp. 117–118) | | 1931 Hogs (Government's Exhibits 114–1, 114–2, etc., and 115) | |
|---|---|---|---|
| 156, 158 | 29, 948 | 75, 403 | 14, 791 |
| 133, 302 | 28, 598 | 73, 961 | 14, 424 |
| 102, 427 | 27, 259 | 73, 458 | 13, 909 |
| 83, 045 | 25, 344 | 41, 429 | 13, 628 |
| 81, 818 | 23, 504 | 40, 816 | 12, 619 |
| 67, 442 | 22, 601 | 35, 894 | 12, 017 |
| 60, 567 | 22, 448 | 35, 277 | 11, 994 |
| 59, 564 | 21, 566 | 28, 132 | 11, 442 |
| 54, 394 | 21, 257 | 22, 607 | 11, 189 |
| 50, 848 | 21, 194 | 21, 227 | 10, 622 |
| 46, 670 | 18, 571 | 21, 164 | 10, 600 |
| 44, 001 | 18, 479 | 20, 743 | 10, 192 |
| 43, 043 | 18, 146 | 20, 545 | 9, 679 |
| 42, 594 | 17, 742 | 20, 323 | 8, 629 |
| 40, 515 | 17, 323 | 19, 201 | 8, 498 |
| 38, 208 | 17, 223 | 19, 051 | 8, 191 |
| 38, 067 | 15, 739 | 18, 764 | 8, 168 |
| 34, 642 | 15, 363 | 17, 988 | 7, 619 |
| 33, 476 | 14, 676 | 17, 462 | 6, 872 |
| 32, 840 | 13, 532 | 17, 212 | 5, 952 |
| 32, 625 | 12, 664 | 17, 133 | 5, 826 |
| 32, 283 | 11, 604 | 16, 312 | 5, 599 |
| 31, 108 | 10, 556 | 15, 810 | 3, 262 |
| | 10, 429 | | |

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| 1929 Sheep (Government's Exhibit 15, pp. | 1931 Sheep (Government's Exhibits 114–1, 114–2, etc., and 115) |
|---|---|
| 119–120) | 295, 514 |
| 245, 746 | 150, 283 |
| 160, 020 | 133, 695 |
| 118, 256 | 104, 604 |
| 111, 259 | 102, 720 |
| 111, 256 | 94, 843 |
| 83, 177 | 70, 240 |
| 58, 363 | 59, 677 |
| 56, 004 | 44, 036 |
| 55, 229 | 43, 274 |
| 47, 885 | 41, 583 |
| 44, 001 | 36, 575 |

140–a. Reference to the average performance per salesman in the various firms, as shown in paragraph 140, indicates that the performance per salesman and buyer in 1929 ranged from 3,149 head to 24,912 head as to cattle and calves; from 10,429 head to 156,158 head as to hogs; and 44,001 head to 245,746 head as to sheep. In 1931 the accountant for the Government eliminated that portion of a salesman's time which, according to the questionnaire, was not spent in the actual selling and buying of livestock. He computed the per-head performance upon the basis of carload equivalents, and combined the salesmen and buyers in

making his computation. According to his method of calculation, the performance varied from 96 cars to 1,415 cars as to cattle and calves in 1931; from 120 cars to 3,820 cars as to hogs; and from 268 to 1,759 cars as to sheep. In Appendix B of the respondents' brief filed in the Supreme Court, October Term, 1937, and made a part of the respondents' exceptions to the tentative Findings of Fact and proposed Order, the respondents have computed average salesmanship performance per salesman for 32 of the largest firms. According to their method of calculation, the average salesmanship performance per salesman in these firms varied in 1931 from 7,671 head to 23,866 head per salesman as to cattle and calves; from 2,262 head to 75,403 head as to hogs; and from 36,575 head to 295,514 head as to sheep. In Appendix B of the Supreme Court brief mentioned above, respondents computed separately the per-buyer performance and show it to range from 4,605 head per buyer in the case of one firm to 33,983 head in the case of another. The results reached through these computations vary to some extent because the classification of some salesmen and buyers whose actual activities as salesmen and buyers are limited in comparison with other functions performed. The evidence also shows that some salesmen act as buyers in addition to their regular salesmanship duties. In their attempt to segregate the performance of salesmen from that of buyers of these 32 firms, the respondents have fallen into error with respect to four firms. It is shown in Appendix B that one firm's 3 8/12 salesmen averaged 12,751 head of cattle and calves in 1931 and that its O buyers bought on an average of 12,352 head. Somebody bought these 12,352 head of cattle and calves, and a reasonable assumption is that the workers whom the
336 respondents have classified solely as salesmen did this buying together with their selling. The same situation that exists with respect to Firm No. 18 exists also with respect to Firms Nos. 56, 53, and 51. The reason the respondents have attempted to segregate the selling activities of the salesmen from the buying activities of the buyers is their claim that "under all the evidence it was shown that cattle and other livestock can be purchased with much greater rapidity than they can be sold efficiently, and that a buyer is able to and does transact business with greater rapidity and in higher volume than a salesman." (Exception No. 62, p. 52, Respondents' Exceptions to Report and Recommendations of the Examiner.) Appendix B of the respondents' brief before the Supreme Court, heretofore referred to, which is in evidence here, indicates that the facts are directly opposite to what the respondents claim them to be. The average annual salesmanship performance per salesman in 1931 and the

average per-head purchasing performance per buyer in the same year, as computed by the respondents, arranged, however, in descending order, are set forth below:

| Average Number of Head of Cattle and Calves Sold Per Salesman in 1931 | Average Number of Head of Cattle and Calves Bought Per Buyer in 1931 |
|---|---|
| 23, 866 | 33, 983 |
| 19, 780 | 25, 366 |
| 19, 738 | 21, 295 |
| 19, 733 | 18, 553 |
| 19, 026 | 17, 530 |
| 18, 591 | 14, 579 |
| 17, 954 | 13, 483 |
| 16, 519 | 11, 878 |
| 15, 561 | 10, 916 |
| 15, 266 | 10, 267 |
| 15, 114 | 9, 893 |
| 14, 844 | 8, 731 |
| 14, 644 | 8, 098 |
| 14, 277 | 7, 923 |
| 14, 135 | 7, 809 |
| 13, 940 | 7, 320 |
| 13, 721 | 6, 988 |
| 12, 751 | 6, 800 |
| 12, 125 | 6, 372 |
| 11, 243 | 5, 983 |
| 11, 212 | 5, 944 |
| 10, 984 | 5, 794 |
| 10, 865 | 5, 660 |
| 10, 274 | 5, 366 |
| 9, 783 | 4, 705 |
| 9, 333 | 4, 605 |
| 9, 205 | |
| 8, 967 | |
| 8, 740 | |
| 8, 057 | |
| 7, 671 | |

337 In order that all service rendered by salesmen and buyers may be incorporated and be given consideration, and in order that no such service may be omitted from consideration, salesmanship and buying service rendered by different individuals in the various firms, or by the same individuals, have been combined and considered together. The reasonable volume hereinafter associated with a reasonable salary in obtaining a reasonable per-head cost of salesmanship to be covered into rates is a combintion of selling and buying volume, and the salaries with which such volume is associated are the salaries paid salesmen and buyers.

140-b. Competent witnesses gave it as their opinion that the Kansas City market is overmanned. From the testimony of one of these witnesses, it is possible to judge his estimate of the extent of the overmanning. There is evidence also that some of the respondents could have handled more business than they were

handling, and would have been more prosperous if they had had the additional business to handle. The witness James Swift testified that there were days when the agencies were taxed to their capacity, but that there were many days when they were not nearly utilizing all their capacity. In estimating what he could afford to pay to get new business, he stated that with his overhead expenses running on just the same he could afford to spend one-half the gross commissions procurable from new business in order to get it. (1T, 4499.) He stated that if his firm had had one-third more business, it would not have had one-third more expense (1T, 4509). The experience of the firms during the season of heavy runs and the relative activity of some of the firms during the peak period shed some light on their potential capacity. Information is available as to the volume of cattle and calves bought and sold during the month of October 1931 by 18 of the 32 firms shown in Appendix B to respondents' brief before the Supreme Court. The record does not show the volume of the other 32 firms during this month. The following table gives the result of a study of these 18 firms:

| Firm number | Total Number Head Bought and Sold | Number Total Salesmen and Buyers | Average Number Head per Salesman and Buyer | October Selling and Buying Equated to Annual Basis |
|---|---|---|---|---|
| 46 | 19,711 | 10 | 1,971 | 23,652 |
| 63 | 20,655 | 9 | 2,295 | 27,540 |
| 54 | 28,942 | 7 | 4,135 | 49,620 |
| 83 | 20,003 | 7 | 2,858 | 34,296 |
| 14 | 4,438 | 7 | 634 | 7,608 |
| 73 | 15,715 | 6 | 2,619 | 31,428 |
| 71 | 7,985 | 6 | 1,331 | 15,972 |
| 84 | 10,261 | 5 | 2,052 | 24,624 |
| 55 | 8,045 | 5 | 1,609 | 19,308 |
| 36 | 7,866 | 4 | 1,966 | 23,592 |
| 12 | 9,682 | 4 | 2,421 | 29,052 |
| 65 | 4,563 | 4 | 1,141 | 13,692 |
| 70 | 4,573 | 4 | 1,143 | 13,716 |
| 20 | 3,998 | 4 | 1,000 | 12,000 |
| 34 | 5,688 | 4 | 1,422 | 17,064 |
| 18 | 6,183 | 3 | 2,061 | 24,732 |
| 26 | 3,709 | 3 | 1,235 | 14,832 |
| 56 | 5,247 | 2 | 2,623 | 31,476 |

(See Government's Exhibits 114-46-A, 114-63-A, etc.)

338 In Appendix B to their Supreme Court brief, heretofore referred to, the respondents show the number of full-time owner and nonowner salesmen in each of the 32 firms and indicate the part-time salesmen by fractions whose denominator is 12. With respect to these part-time men, they state: "In practically all instances these extra salesmen worked during the period of peak receipts." The record shows the facts to be otherwise. The following table sets forth, by months, the volume of receipts

at the Kansas City stockyard and the number of salesmen selling cattle and calves during each month of 1931:

| Months | Number of head of cattle and calves (Gov. Ex. 106-J, p. 25) | Percent | Number of employees and owner cattle and calf salesmen in 1931 (Gov. Ex. 114-1-A, etc.) | Percent |
|---|---|---|---|---|
| January | 186,621 | 100.00 | 166 | 100.00 |
| February | 174,987 | 86.19 | 166 | 100.00 |
| March | 149,272 | 95.31 | 166 | 100.00 |
| April | 140,242 | 89.54 | 160½ | 96.69 |
| May | 121,867 | 77.81 | 159 | 95.78 |
| June | 124,160 | 79.27 | 158 | 95.18 |
| July | 118,036 | 75.36 | 159 | 95.78 |
| August | 200,801 | 128.21 | 155½ | 93.67 |
| September | 196,386 | 125.39 | 155½ | 93.67 |
| October | 249,498 | 159.30 | 155½ | 93.67 |
| November | 228,397 | 145.83 | 155½ | 93.67 |
| December | 137,402 | 87.73 | 155½ | 93.67 |

A correct statement of the situation is that during the peak month of October, when the receipts were 159.3 percent of those in January, the number of owner and nonowner cattle and calf salesmen was 93.67 percent of the number in January, and that as few salesmen were at work in the peak month of October as were at work during any other month in the year.

141. Throughout the record, some witnesses, in referring to the volume of livestock handled, do so in terms of cars or car-lot equivalents. Others refer to it in head. The number of animals per straight car received by the various respondents varies somewhat according to the character of the business done, but the normal and usual number of head of cattle contained in a straight car is approximately 28 head; calves, 57 head; hogs, 75 head; and sheep, 250 head.

142. In the tentative order served upon the respondents on June 2, 1938, and in the Examiner's report of January 17, 1939, it was found that it would be reasonable to expect a good and experienced cattle salesman to sell in a year from 27,000 to 32,000 head of cattle and calves as they arrive at the Kansas City stockyards. It was found also that it would be reasonable to associate the selling of 29,000 head of cattle and calves in a year with an annual salary of $4,000 and that $.1379 was the reasonable per-head cost which should be covered into rates on account of salesmanship of cattle and calves. The respondents have attacked this finding vigorously, on the ground that the selling of 29,000 head of cattle and calves, one of the two items to be associated, was higher than reasonably could be expected under all the circumstances revealed by the record. In partial substantiation of their objections to the finding contained

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in paragraph 140-a of the Examiner's report, they say that the finding fails to state that 23,866 head of cattle and calves, the average salesmanship volume per salesman attained by John Clay & Company, was the highest actual salesmanship performance of any salesman employed by any agency upon the market. It is a fact that no such finding was made, and it would have . n incorrect if made. The average salesmanship performance per salesman in a firm does not reveal the actual performance of any individual salesman in that firm. The fact that the performance is a computed average is prima facie evidence that some individual salesmen in the firm sold more than that average, but how much above the average performance any individual attained, the record does not reveal in the case of any firm. The average performance per salesman in a firm becomes, therefore, merely the last outpost of mathematical computation, usable as a guide in the exercise of reasonable judgment. In the instant case, even if the actual performance of each individual salesman were precisely known, it would still be necessary, in arriving at a reasonable annual performance to be associated with a reasonable salary, to give weight to the fact that the market is overmanned and that some salesmen consequently did not have an opportunity during a year to do a full year's work. The respondents' argument based upon average performance is not convincing. Their claim that the general condition, which developed between July 23, 1933, and November 1, 1937, warrants a reconsideration of the finding that it is unreasonable to associate the selling of 29,000 head of cattle and calves a year with an annual salary of $4,000, rests upon firmer ground. There is evidence in the record as it stood when closed in 1932 which would justify the finding made. This evidence, together with that taken at the third hearing, is such that it might well meet the technical test of substantiality in the courts. The rate maker here, however, is more interested in substantial justice than he is in technically substantial evidence. On the basis of all the facts contained in the record as it now stands, he believes that the finding with respect to associating the selling of 29,000 head of cattle and calves a year with an annual salary of $4,000, as made in the tentative order of June 2, 1938, and as recommended in the report of the Examiner of January 17, 1939, should be modified. This raises the question of what finding should be made as to a reasonable annual salesmanship volume and a reasonable salary to be associated with that volume in order to arrive at a reasonable per-head cost of salesmanship to be covered into rates on account of selling cattle and calves. On the basis of the facts of record relative to the ma'ter of salesmanship performance and compensation therefor, it is my opinion that it would be reasonable to associate an annual selling and buying perform-

ance per salesman and buyer of 24,000 head of cattle and calves with an annual salary of $3,600. It is so found. The resultant per-head cost is $.15. In the tentative order and in the Examiner's report, it was found that it would be reasonable to expect a good hog salesman to sell from 75,000 to 100,000 head of hogs in a year, and that it would be reasonable to
340 associate the selling of 85,000 head of hogs with an annual salary of $3,000. After a careful examination of the record, I find nothing which would warrant a revision of this finding in the tentative order or the disregarding of the recommendation of the Examiner. The resultant per-head cost of the association of 85,000 head of hogs with a $3,000 salary on account of selling hogs is $0.353 per head. It was found in the tentative order and by the Examiner that it would be reasonable to expect a good sheep salesman to sell from 240,000 to 275,000 head of sheep a year, and that it would be reasonable to associate a salesmanship performance of 250,000 head of sheep with an annual salary of $3,500. I find in the record now before me nothing which warrants the revision of this finding. The resultant per-head cost on account of selling sheep, resulting from this association of annual volume with annual salary, is $.0140.

143. On the basis of all the facts of record, it is found that the following constitute and are the reasonable per-head costs to be covered into rates on account of the selling and buying of the various species of livestock:

| | |
|---|---|
| Cattle and calves | $.1500 |
| Hogs | .0353 |
| Sheep | .0140 |

144. The per-head costs incident to yarding salaries on account of each species, irrespective of method of arrival, computed in the case of each respondent on the basis explained in paragraph 131-a, are set forth in the following tables:

CATTLE AND CALVES

| Firm No. | Number of head | Yarding salaries | Firm No. | Number of head | Yarding salaries |
|---|---|---|---|---|---|
| 66 | 3,656 | $0.0064 | 16 | 26,673 | $0.0699 |
| 34 | 82,225 | .0129 | 14 | 42,094 | .0706 |
| 67 | 454 | .0140 | 12 | 67,947 | .0711 |
| 70 | 11,360 | .0278 | 26 | 30,283 | .0719 |
| 83 | 122,107 | .0279 | 65 | 40,303 | .0720 |
| 15 | 14,983 | .0311 | 63 | 138,886 | .0721 |
| 9 | 3,113 | .0388 | 75 | 23,113 | .0746 |
| 87 | 991 | .0395 | 10 | 119,514 | .0781 |
| 35 | 61,658 | .0400 | 59 | 184,860 | .0788 |
| 30 | 23,436 | .0426 | 20 | 32,220 | .0810 |
| 84 | 185,312 | .0481 | 71 | 427,026 | .0811 |
| 61 | 10,731 | .0480 | 6 | 15,841 | .0834 |
| 341 37 | 2,122 | .0490 | 25 | 53,312 | .0840 |
| 53 | 28,558 | .0496 | 51 | 22,495 | .0849 |
| 70 | 38,967 | .0517 | 29 | 23,581 | .0880 |
| 73 | 79,012 | .0631 | 4 | 35,763 | .0895 |

CATTLE AND CALVES

| Firm No. | Number of head | Yarding salaries | Firm No. | Number of head | Yarding salaries |
|---|---|---|---|---|---|
| 56 | 34,058 | $0.0036 | 32 | 110,449 | $0.1015 |
| 42 | 67,492 | .0585 | 36 | 86,051 | .1023 |
| 60 | 19,205 | .0594 | 34 | 67,609 | .1044 |
| 46 | 157,492 | .0619 | 19 | 12,570 | .1112 |
| 74 | 8,756 | .0621 | 78 | 10,819 | .1139 |
| 53 | 21,690 | .0642 | 72 | 2,397 | .1206 |
| 18 | 59,107 | .0650 | 77 | 23,436 | .1230 |
| 48 | 42,359 | .0665 | 13 | 63,945 | .1285 |
| 62 | 31,539 | .0666 | 7 | 15,790 | .1353 |
| 55 | 61,113 | .0676 | 17 | 11,336 | .1399 |
| 23 | 34,942 | .0682 | 75 | 9,619 | .1635 |
| 33 | 1,479 | .0685 | 11 | 1,878 | .2136 |

HOGS

| | | | | | |
|---|---|---|---|---|---|
| 82 | 30,135 | $0.0089 | 10 | 96,653 | $0.0305 |
| 29 | 12,619 | .0090 | 4 | 9,552 | .0309 |
| 67 | 6,015 | .0091 | 40 | 33,474 | .0316 |
| 34 | 16,312 | .0112 | 37 | 35 | .0320 |
| 78 | 4,736 | .0136 | 26 | 20,321 | .0332 |
| 66 | 737 | .0151 | 79 | 2,989 | .0355 |
| 70 | 13,628 | .0155 | 75 | 5,134 | .0358 |
| 43 | 5,963 | .0195 | 16 | 3,498 | .0357 |
| 59 | 70,554 | .0196 | 36 | 147,922 | .0364 |
| 52 | 6,196 | .0197 | 7 | 41,090 | .0366 |
| 18 | 11,653 | .0207 | 51 | 159,184 | .0367 |
| 24 | 2,304 | .0207 | 30 | 3,489 | .0395 |
| 77 | 10,192 | .0218 | 12 | 28,133 | .0400 |
| 61 | 9,579 | .0222 | 35 | 12,017 | .0421 |
| 57 | 399 | .0228 | 13 | 40,816 | .0439 |
| 6 | 8,166 | .0228 | 73 | 34,425 | .0507 |
| 42 | 11,442 | .0230 | 15 | 20,743 | .0599 |
| 20 | 3,727 | .0235 | 9 | 19,051 | .0601 |
| 76 | 8,639 | .0263 | 54 | 27,122 | .0632 |
| 63 | 150,808 | .0263 | 25 | 19,201 | .0641 |
| 71 | 20,328 | .0267 | 11 | 2,990 | .0710 |
| 62 | 15,810 | .0284 | 60 | 21,164 | .0721 |
| 33 | 4,078 | .0287 | 55 | 21,227 | .0760 |
| 56 | 8,191 | .0290 | 14 | 27,819 | .1112 |
| 65 | 7,619 | .0269 | 69 | 15,764 | .1241 |
| 17 | 6,872 | .0300 | | | |

342 SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 42 | 140,481 | $0.0030 | 1 | 43,274 | $0.0081 |
| 54 | 561,028 | .0034 | 5 | 209,208 | .0084 |
| 35 | 44,036 | .0041 | 37 | 96,975 | .0095 |
| 63 | 43,330 | .0051 | 59 | 205,441 | .0097 |
| 38 | 36,575 | .0065 | 61 | 991 | .0105 |
| 44 | 267,391 | .0078 | 10 | 94,843 | .0156 |

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding salaries are as follows:

$.075 per head as to cattle and calves.
$.030 per head as to hogs.
$.008 per head as to sheep.

## Yarding Expenses

**145. The per head cost of yarding expenses on account of each species is as follows:**

CATTLE AND CALVES

| Firm No. | Number of head | Yarding expenses | Firm No. | Number of head | Yarding expenses |
|---|---|---|---|---|---|
| 61 | 10,731 | $.0008 | 20 | 32,320 | $.0110 |
| 37 | 2,122 | .0009 | 84 | 67,609 | .0114 |
| 6 | 15,841 | .0014 | 77 | 23,436 | .0116 |
| 15 | 14,983 | .0026 | 55 | 61,113 | .0116 |
| 78 | 10,819 | .0026 | 53 | 28,538 | .0121 |
| 16 | 26,673 | .0040 | 17 | 11,336 | .0124 |
| 54 | 52,225 | .0045 | 10 | 119,514 | .0125 |
| 88 | 2,897 | .0051 | 26 | 30,383 | .0127 |
| 30 | 23,436 | .0054 | 36 | 86,051 | .0128 |
| 39 | 1,479 | .0054 | 18 | 59,107 | .0129 |
| 56 | 34,058 | .0075 | 51 | 22,495 | .0133 |
| 64 | 185,312 | .0078 | 35 | 53,312 | .0135 |
| 82 | 110,449 | .0080 | 14 | 42,094 | .0143 |
| 13 | 63,945 | .0082 | 83 | 122,107 | .0145 |
| 75 | 25,113 | .0082 | 29 | 25,561 | .0150 |
| 7 | 15,790 | .0084 | 52 | 21,690 | .0151 |
| 46 | 157,432 | .0084 | 48 | 42,359 | .0154 |
| 70 | 38,967 | .0090 | 23 | 34,942 | .0156 |
| 12 | 67,947 | .0093 | 42 | 67,492 | .0159 |
| 65 | 40,308 | .0095 | 74 | 8,750 | .0160 |
| 4 | 38,763 | .0096 | 63 | 128,888 | .0172 |
| 38 | 61,638 | .0100 | 60 | 19,305 | .0173 |
| 62 | 31,539 | .0103 | 71 | 62,088 | .0181 |
| 73 | 79,012 | .0104 | 19 | 12,570 | .0202 |
| 59 | 164,360 | .0105 | | | |



HOGS

| | | | | | |
|---|---|---|---|---|---|
| 14 | 27,819 | $.0001 | 10 | 98,653 | $.0004 |
| 45 | 5,952 | .0001 | 32 | 6,196 | .0005 |
| 34 | 27,122 | .0001 | 25 | 19,201 | .0005 |
| 61 | 9,579 | .0001 | 35 | 12,017 | .0006 |
| 53 | 4,078 | .0001 | 77 | 10,192 | .0006 |
| 26 | 147,922 | .0001 | 78 | 4,738 | .0006 |
| 4 | 9,552 | .0002 | 62 | 15,510 | .0007 |
| 6 | 8,168 | .0002 | 73 | 34,425 | .0007 |
| 7 | 41,090 | .0002 | 15 | 20,743 | .0009 |
| 18 | 11,653 | .0002 | 75 | 5,134 | .0010 |
| 24 | 16,312 | .0002 | 79 | 2,969 | .0010 |
| 55 | 21,227 | .0002 | 28 | 20,321 | .0010 |
| 59 | 70,554 | .0002 | 30 | 2,490 | .0011 |
| 63 | 150,806 | .0002 | 71 | 20,333 | .0012 |
| 46 | 33,474 | .0003 | 29 | 12,619 | .0012 |
| 82 | 30,135 | .0003 | 23 | 1,536 | .0013 |
| 13 | 40,816 | .0004 | 42 | 11,442 | .0014 |
| 20 | 3,727 | .0004 | 17 | 6,872 | .0015 |
| 51 | 159,184 | .0004 | 58 | 240 | .0045 |
| 33 | 18,764 | .0004 | 65 | 7,619 | .0065 |
| 60 | 21,164 | .0004 | | | |

SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 18 | 3,157 | $.0001 | 60 | 753 | $.0023 |
| 46 | 7,795 | .0001 | 82 | 2,007 | .0023 |
| 63 | 43,330 | .0001 | 53 | 723 | .0025 |
| 73 | 4,035 | .0001 | 75 | 2,487 | .0025 |
| 26 | 35,575 | .0001 | 77 | 1,695 | .0026 |
| 13 | 5,083 | .0002 | 78 | 3,432 | .0026 |
| 35 | 44,036 | .0002 | 15 | 3,254 | .0026 |
| 55 | 3,685 | .0002 | 17 | 756 | .0026 |
| 33 | 2,380 | .0002 | 28 | 2,857 | .0027 |
| 6 | 1,220 | .0003 | 29 | 734 | .0027 |
| 20 | 372 | .0003 | 71 | 1,414 | .0011 |
| 25 | 3,676 | .0003 | 30 | 533 | .0046 |
| 61 | 6,942 | .0003 | 42 | 1,460 | .0130 |
| 52 | 4,320 | .0003 | 65 | 2,194 | .0131 |

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding expenses are as follows:

$.014 per head as to cattle and calves.
$.0060 per head as to hogs.
$.0004 per head as to sheep.

344 Office Salaries

146. The per head cost on account of office salaries allocated to each of the species is as follows:

CATTLE AND CALVES

| Firm No. | Number of head | Office salaries | Firm No. | Number of head | Office salaries |
|---|---|---|---|---|---|
| 6 | 15,841 | $0.0010 | 46 | 157,432 | $0.0580 |
| 17 | 11,336 | .0143 | 54 | 185,312 | .0588 |
| 83 | 122,107 | .0203 | 75 | 25,113 | .0567 |
| 71 | 62,038 | .0206 | 76 | 9,619 | .0570 |
| 14 | 42,094 | .0217 | 73 | 79,012 | .0575 |
| 34 | 52,225 | .0239 | 20 | 32,320 | .0626 |
| 35 | 61,658 | .0240 | 52 | 21,690 | .0629 |
| 42 | 67,492 | .0256 | 7 | 15,790 | .0631 |
| 53 | 28,558 | .0330 | 78 | 10,819 | .0656 |
| 13 | 63,945 | .0362 | 61 | 10,731 | .0692 |
| 63 | 128,888 | .0367 | 23 | 34,942 | .0693 |
| 82 | 110,449 | .0373 | 29 | 25,581 | .0707 |
| 10 | 119,514 | .0396 | 70 | 38,967 | .0730 |
| 62 | 31,539 | .0396 | 25 | 53,312 | .0734 |
| 30 | 23,436 | .0414 | 56 | 34,058 | .0810 |
| 55 | 61,113 | .0441 | 65 | 40,303 | .0879 |
| 77 | 23,436 | .0442 | 74 | 8,750 | .1002 |
| 26 | 30,383 | .0447 | 81 | 22,495 | .1138 |
| 60 | 19,205 | .0449 | 19 | 12,570 | .1197 |
| 12 | 67,947 | .0450 | 11 | 1,878 | .1374 |
| 59 | 164,860 | .0458 | 33 | 1,479 | .1388 |
| 18 | 59,107 | .0460 | 9 | 3,113 | .1472 |
| 79 | 11,360 | .0484 | 37 | 2,122 | .1567 |
| 48 | 42,359 | .0492 | 66 | 3,656 | .1629 |
| 36 | 86,051 | .0518 | 72 | 2,397 | .1784 |
| 4 | 35,763 | .0525 | 67 | 454 | .1821 |
| 15 | 14,983 | .0529 | 85 | 2,897 | .1955 |
| 84 | 67,609 | .0534 | 87 | 991 | .2117 |
| 16 | 26,673 | .0544 | | | |

HOGS

| | | | | | |
|---|---|---|---|---|---|
| 6 | 8,168 | $0.0004 | 10 | 98,653 | $0.0313 |
| 17 | 6,872 | .0076 | 52 | 9,196 | .0319 |
| 34 | 16,312 | .0115 | 75 | 4,738 | .0322 |
| 14 | 27,819 | .0117 | 70 | 13,628 | .0336 |
| 61 | 9,679 | .0146 | 59 | 70,554 | .0339 |
| 71 | 20,323 | .0152 | 67 | 6,015 | .0365 |
| 53 | 18,764 | .0181 | 12 | 28,132 | .0366 |
| 42 | 11,442 | .0189 | 65 | 7,619 | .0384 |
| 63 | 150,806 | .0194 | 11 | 2,990 | .0395 |
| 77 | 10,192 | .0195 | 20 | 3,727 | .0403 |
| 13 | 40,816 | .0198 | 46 | 33,474 | .0422 |
| 79 | 2,969 | .0209 | 16 | 8,498 | .0451 |
| 15 | 20,743 | .0210 | 78 | 5,134 | .0503 |
| 35 | 12,017 | .0214 | 23 | 1,536 | .0505 |
| 345 51 | 159,184 | .0229 | 54 | 27,122 | .0514 |
| 73 | 34,425 | .0231 | 80 | 3,489 | .0518 |
| 4 | 9,552 | .0232 | 33 | 1,690 | .0537 |
| 76 | 8,629 | .0232 | 84 | 11,944 | .0553 |
| 7 | 41,090 | .0233 | 19 | 4,497 | .0579 |
| 60 | 21,164 | .0238 | 9 | 19,051 | .0585 |
| 55 | 21,227 | .0253 | 25 | 19,201 | .0604 |

| Firm No. | Number of head | Office salaries | Firm No. | Number of head | Office salaries |
|---|---|---|---|---|---|
| 18 | 11,653 | $0.0259 | 83 | 4,078 | $0.0614 |
| 36 | 147,922 | .0262 | 74 | 2,364 | .0685 |
| 62 | 15,810 | .0266 | 37 | 35 | .0874 |
| 82 | 30,135 | .0270 | 56 | 8,191 | .0933 |
| 48 | 5,952 | .0278 | 72 | 1,077 | .0970 |
| 26 | 20,321 | .0292 | 87 | 399 | .1030 |
| 29 | 12,619 | .0300 | 66 | 737 | .1489 |
| | | | 88 | 249 | .2100 |

SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 6 | 1,220 | $0.0005 | 52 | 4,320 | $0.0180 |
| 1 | 43,274 | .0013 | 36 | 36,575 | .0191 |
| 17 | 756 | .0042 | 51 | 6,942 | .0194 |
| 50 | 205,441 | .0044 | 65 | 2,184 | .0195 |
| 44 | 267,391 | .0055 | 16 | 1,570 | .0199 |
| 54 | 591,028 | .0059 | 23 | 862 | .0201 |
| 34 | 150,283 | .0067 | 55 | 3,685 | .0204 |
| 35 | 44,036 | .0068 | 12 | 3,439 | .0206 |
| 14 | 7,365 | .0071 | 63 | 3,065 | .0212 |
| 70 | 2,273 | .0074 | 7 | 1,295 | .0252 |
| 18 | 3,157 | .0078 | 46 | 7,795 | .0264 |
| 4 | 1,896 | .0095 | 78 | 3,432 | .0283 |
| 57 | 96,975 | .0102 | 60 | 753 | .0284 |
| 42 | 140,481 | .0105 | 82 | 2,007 | .0284 |
| 8 | 209,208 | .0108 | 20 | 872 | .0291 |
| 83 | 2,380 | .0110 | 25 | 3,676 | .0316 |
| 10 | 94,843 | .0113 | 34 | 190 | .0341 |
| 76 | 1,553 | .0115 | 70 | 2,507 | .0345 |
| 68 | 43,330 | .0131 | 29 | 734 | .0374 |
| 15 | 3,854 | .0135 | 67 | 580 | .0388 |
| 73 | 4,035 | .0135 | 48 | 430 | .0395 |
| 77 | 1,635 | .0149 | 19 | 1,252 | .0449 |
| 47 | 1,460 | .0158 | 11 | 175 | .0490 |
| 86 | 4,924 | .0158 | 74 | 333 | .0630 |
| 13 | 5,688 | .0162 | 33 | 805 | .0676 |
| 61 | 991 | .0165 | 30 | 533 | .0689 |
| 71 | 1,414 | .0172 | 37 | 321 | .0757 |
| 53 | 733 | .0173 | 9 | 598 | .0796 |
| 75 | 2,487 | .0181 | 66 | 283 | .1609 |
| 28 | 2,657 | .0185 | 72 | 45 | .1764 |

346 On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office salaries are as follows:

$.0525 per head as to cattle and calves.

$.0300 per head as to hogs.

$.0100 per head as to sheep.

## Office Expenses

147. The per head cost on account of office expenses allocated to each of the species is as follows:

CATTLE AND CALVES

| Firm No. | Number of head | Office expenses | Firm No. | Number of head | Office expenses |
|---|---|---|---|---|---|
| 88 | 2,897 | $0.0016 | 26 | 30,383 | $0.0328 |
| 37 | 2,122 | .0017 | 78 | 10,819 | .0328 |
| 72 | 2,307 | .0091 | 46 | 157,432 | .0331 |
| 84 | 67,609 | .0138 | 61 | 10,731 | .0345 |
| 16 | 26,673 | .0147 | 70 | 38,967 | .0360 |
| 76 | 9,619 | .0158 | 77 | 23,436 | .0366 |
| 4 | 33,763 | .0163 | 75 | 25,113 | .0371 |
| 59 | 164,860 | .0186 | 71 | 62,038 | .0379 |
| 67 | 454 | .0190 | 34 | 82,225 | .0401 |
| 23 | 34,942 | .0214 | 30 | 23,436 | .0402 |
| 12 | 67,947 | .0217 | 15 | 14,983 | .0411 |
| 54 | 185,312 | .0219 | 73 | 79,012 | .0419 |
| 7 | 15,790 | .0222 | 35 | 61,658 | .0429 |
| 18 | 50,107 | .0232 | 62 | 31,530 | .0430 |
| 42 | 67,492 | .0236 | 6 | 18,841 | .0434 |
| 83 | 122,107 | .0236 | 82 | 110,449 | .0443 |
| 36 | 86,051 | .0238 | 60 | 13,205 | .0447 |
| 52 | 21,690 | .0251 | 19 | 12,570 | .0455 |
| 56 | 34,058 | .0269 | 79 | 11,360 | .0456 |
| 33 | 1,479 | .0272 | 14 | 42,094 | .0458 |
| 65 | 40,303 | .0279 | 50 | 32,320 | .0461 |
| 10 | 119,514 | .0290 | 13 | 63,945 | .0499 |
| 48 | 42,359 | .0291 | 11 | 1,878 | .0538 |
| 17 | 11,336 | .0292 | 74 | 8,750 | .0543 |
| 63 | 128,888 | .0292 | 29 | 25,581 | .0546 |
| 53 | 28,586 | .0301 | 51 | 22,495 | .0573 |
| 25 | 53,312 | .0302 | 87 | 991 | .1042 |
| 58 | 61,113 | .0313 | 9 | 3,113 | .1947 |

HOGS

| | | | | | |
|---|---|---|---|---|---|
| 37 | 35 | $0.0011 | 42 | 11,442 | $0.0175 |
| 88 | 249 | .0016 | 12 | 28,132 | .0176 |
| 67 | 6,015 | .0038 | 11 | 2,990 | .0178 |
| 76 | 8,629 | .0048 | 55 | 21,227 | .0179 |
| 72 | 1,077 | .0049 | 6 | 8,168 | .0179 |
| 347 61 | 9,579 | .0073 | 34 | 16,312 | .0193 |
| 4 | 9,552 | .0073 | 79 | 2,969 | .0198 |
| 7 | 41,090 | .0082 | 54 | 27,122 | .0202 |
| 33 | 1,690 | .0106 | 26 | 20,321 | .0215 |
| 61 | 189,184 | .0114 | 19 | 4,497 | .0220 |
| 38 | 147,922 | .0121 | 10 | 96,653 | .0229 |
| 65 | 7,619 | .0121 | 60 | 21,164 | .0237 |
| 16 | 8,498 | .0122 | 29 | 12,619 | .0239 |
| 52 | 6,196 | .0127 | 14 | 27,819 | .0244 |
| 18 | 11,653 | .0130 | 25 | 19,201 | .0249 |
| 83 | 4,078 | .0131 | 48 | 33,474 | .0255 |
| 59 | 70,554 | .0137 | 13 | 40,816 | .0256 |
| 84 | 11,944 | .0142 | 71 | 20,323 | .0280 |
| 53 | 150,806 | .0147 | 62 | 15,810 | .0288 |
| 17 | 6,872 | .0154 | 20 | 3,727 | .0295 |
| 23 | 1,536 | .0157 | 56 | 8,191 | .0310 |
| 77 | 16,192 | .0162 | 82 | 30,135 | .0311 |
| 78 | 4,738 | .0162 | 75 | 5,134 | .0330 |
| 15 | 20,743 | .0163 | 74 | 2,364 | .0373 |
| 43 | 5,953 | .0164 | 35 | 12,017 | .0382 |
| 58 | 18,764 | .0165 | 87 | 399 | .0502 |
| 70 | 13,628 | .0165 | 30 | 3,480 | .0503 |
| 73 | 34,425 | .0166 | 9 | 19,051 | .0774 |

SHEEP

| Firm No. | Number of head | Office expenses | Firm No. | Number of head | Office expenses |
|---|---|---|---|---|---|
| 37 | 321 | $0.0008 | 77 | 1,635 | $0.0121 |
| 84 | 150,283 | .0017 | 35 | 44,036 | .0123 |
| 86 | 205,441 | .0018 | 83 | 2,380 | .0125 |
| 54 | 591,028 | .0022 | 25 | 3,676 | .0128 |
| 4 | 1,896 | .0031 | 33 | 805 | .0133 |
| 76 | 1,553 | .0032 | 26 | 2,657 | .0138 |
| 18 | 3,157 | .0039 | 78 | 3,432 | .0140 |
| 67 | 580 | .0041 | 55 | 3,685 | .0147 |
| 43 | 140,481 | .0042 | 14 | 7,365 | .0147 |
| 87 | 96,975 | .0050 | 42 | 1,460 | .0149 |
| 5 | 209,208 | .0053 | 46 | 7,795 | .0150 |
| 88 | 4,924 | .0053 | 53 | 733 | .0161 |
| 16 | 1,570 | .0055 | 19 | 1,232 | .0171 |
| 44 | 207,391 | .0055 | 70 | 2,507 | .0173 |
| 65 | 2,184 | .0062 | 1 | 43,274 | .0181 |
| 23 | 862 | .0063 | 6 | 1,220 | .0211 |
| 79 | 2,273 | .0070 | 13 | 5,686 | .0213 |
| 83 | 4,320 | .0076 | 11 | 175 | .0217 |
| 17 | 756 | .0082 | 48 | 430 | .0218 |
| 61 | 991 | .0082 | 20 | 872 | .0223 |
| 10 | 94,843 | .0083 | 62 | 3,065 | .0234 |
| 7 | 1,295 | .0086 | 60 | 753 | .0275 |
| 76 | 1,553 | .0089 | 74 | 333 | .0275 |
| 72 | 45 | .0091 | 29 | 734 | .0289 |
| 348 51 | 6,942 | .0096 | 71 | 1,414 | .0314 |
| 73 | 4,035 | .0097 | 82 | 2,007 | .0322 |
| 12 | 3,439 | .0099 | 34 | 190 | .0574 |
| 63 | 43,330 | .0099 | 30 | 533 | .0671 |
| 15 | 3,854 | .0103 | 9 | 598 | .1039 |
| 75 | 2,487 | .0118 | | | |

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office expenses are as follows:

$.0300 per head as to cattle and calves.
$.0175 per head as to hogs.
$.0050 per head as to sheep.

## Business Getting and Maintaining Expenses

148. The expenses included under this heading cover advertising, travel, auto operation, miscellaneous entertaining, and exchange dues and assessments. The per head cost on account of business getting and maintaining expenses allocated to each of the species is as follows:

CATTLE AND CALVES

| Firm No. | Number of head | Business getting and maintaining expenses | Firm No. | Number of head | Business getting and maintaining expenses |
|---|---|---|---|---|---|
| 76 | 9,619 | $0.0058 | 23 | 34,942 | $0.0309 |
| 66 | 3,656 | .0107 | 39 | 25,381 | .0455 |
| 67 | 454 | .0170 | 17 | 11,336 | .0474 |
| 15 | 14,983 | .0219 | 60 | 19,205 | .0480 |
| 37 | 2,122 | .0239 | 48 | 42,359 | .0508 |
| 72 | 2,307 | .0241 | 7 | 15,790 | .0519 |
| 9 | 3,113 | .0264 | 16 | 26,673 | .0520 |
| 56 | 34,058 | .0371 | 33 | 1,479 | .0540 |
| 85 | 40,309 | .0371 | 79 | 11,360 | .0540 |
| 61 | 10,731 | .0377 | 81 | 22,495 | .0543 |

CATTLE AND CALVES—Continued

| Firm No. | Number of head | Business getting and maintaining expenses | Firm No. | Number of head | Business getting and maintaining expenses |
|---|---|---|---|---|---|
| 38 | 86,051 | $0.0576 | 52 | 21,690 | $0.0763 |
| 30 | 23,436 | .0581 | 20 | 32,320 | .0797 |
| 87 | 991 | .0599 | 14 | 42,094 | .0780 |
| 55 | 61,113 | .0612 | 82 | 110,449 | .0819 |
| 18 | 50,107 | .0628 | 26 | 30,383 | .0873 |
| 77 | 23,436 | .0632 | 12 | 67,947 | .0884 |
| 349 78 | 10,819 | .0639 | 54 | 185,312 | .0924 |
| 46 | 157,432 | .0647 | 19 | 12,570 | .0974 |
| 75 | 25,113 | .0656 | 73 | 79,012 | .1057 |
| 6 | 15,841 | .0672 | 42 | 67,492 | .1112 |
| 83 | 122,107 | .0677 | 70 | 38,967 | .1149 |
| 34 | 52,225 | .0699 | 35 | 61,658 | .1188 |
| 13 | 63,945 | .0714 | 4 | 35,763 | .1232 |
| 84 | 67,609 | .0726 | 63 | 128,888 | .1262 |
| 89 | 164,900 | .0732 | 53 | 28,558 | .1346 |
| 25 | 53,312 | .0735 | 10 | 119,514 | .1449 |
| 74 | 8,750 | .0750 | 62 | 31,539 | .1655 |
| 71 | 62,038 | .0756 | 88 | 2,897 | .2783 |

HOGS

| | | | | | |
|---|---|---|---|---|---|
| 76 | 8,629 | $0.0022 | 30 | 3,489 | $0.0265 |
| 66 | 737 | .0060 | 7 | 41,090 | .0267 |
| 67 | 6,015 | .0062 | 83 | 4,078 | .0268 |
| 9 | 19,051 | .0082 | 34 | 16,312 | .0272 |
| 72 | 1,077 | .0104 | 75 | 5,134 | .0277 |
| 15 | 20,743 | .0108 | 25 | 19,201 | .0292 |
| 20 | 3,727 | .0130 | 6 | 8,168 | .0303 |
| 56 | 8,191 | .0142 | 54 | 27,122 | .0302 |
| 37 | 35 | .0157 | 38 | 1,536 | .0309 |
| 48 | 5,952 | .0161 | 46 | 33,474 | .0321 |
| 61 | 9,679 | .0161 | 71 | 20,323 | .0327 |
| 65 | 7,619 | .0163 | 19 | 4,497 | .0324 |
| 59 | 70,554 | .0164 | 13 | 40,816 | .0340 |
| 87 | 399 | .0184 | 55 | 21,227 | .0344 |
| 29 | 12,619 | .0191 | 74 | 2,364 | .0344 |
| 78 | 4,738 | .0191 | 4 | 9,552 | .0353 |
| 16 | 8,498 | .0235 | 52 | 6,196 | .0373 |
| 17 | 6,872 | .0238 | 12 | 28,132 | .0393 |
| 60 | 21,164 | .0238 | 82 | 30,135 | .0394 |
| 350 36 | 147,922 | .0238 | 63 | 150,806 | .0410 |
| 33 | 1,690 | .0240 | 26 | 20,321 | .0421 |
| 79 | 2,969 | .0251 | 73 | 34,425 | .0467 |
| 18 | 11,653 | .0252 | 53 | 18,764 | .0490 |
| 84 | 11,944 | .0255 | 10 | 96,683 | .0535 |
| 51 | 159,184 | .0260 | 42 | 11,442 | .0544 |
| 70 | 13,628 | .0260 | 35 | 12,017 | .0546 |
| 14 | 27,819 | .0261 | 62 | 15,810 | .0773 |
| 77 | 10,192 | .0262 | 88 | 249 | .1834 |

SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 76 | 1,553 | $0.0017 | 83 | 2,380 | $0.0199 |
| 66 | 283 | .0055 | 29 | 734 | .0204 |
| 56 | 4,924 | .0058 | 12 | 3,439 | .0206 |
| 15 | 3,854 | .0066 | 44 | 267,391 | .0208 |
| 67 | 580 | .0070 | 25 | 2,676 | .0211 |
| 84 | 150,283 | .0081 | 33 | 805 | .0216 |
| 20 | 872 | .0091 | 60 | 753 | .0217 |
| 73 | 4,035 | .0092 | 70 | 2,507 | .0219 |
| 65 | 2,184 | .0093 | 51 | 6,942 | .0229 |
| 87 | 96,975 | .0094 | 59 | 205,441 | .0234 |
| 72 | 45 | .0104 | 14 | 7,365 | .0236 |
| 18 | 3,157 | .0111 | 7 | 1,295 | .0238 |
| 351 9 | 898 | .0111 | 30 | 533 | .0241 |
| 1 | 43,274 | .0116 | 10 | 94,843 | .0246 |
| 16 | 1,570 | .0120 | 13 | 5,688 | .0248 |
| 55 | 3,685 | .0131 | 19 | 1,282 | .0254 |
| 48 | 430 | .0140 | 82 | 4,320 | .0262 |
| 54 | 591,028 | .0140 | 71 | 1,414 | .0263 |
| 79 | 2,273 | .0141 | 35 | 44,026 | .0269 |
| 37 | 321 | .0142 | 74 | 333 | .0273 |
| 75 | 2,487 | .0158 | 6 | 1,220 | .0279 |
| 23 | 862 | .0158 | 63 | 43,330 | .0283 |
| 4 | 1,896 | .0163 | 32 | 2,007 | .0305 |
| 46 | 7,795 | .0173 | 26 | 2,657 | .0317 |
| 17 | 758 | .0181 | 43 | 140,481 | .0322 |
| 36 | 36,575 | .0181 | 53 | 733 | .0353 |
| 5 | 209,206 | .0194 | 42 | 1,460 | .0399 |
| 61 | 991 | .0195 | 34 | 190 | .0429 |
| 77 | 1,635 | .0196 | 82 | 3,065 | .0651 |
| 78 | 3,432 | .0199 | | | |

352 148–a. The testimony in the third hearing does not show, by firms, the amount expended by each on account of business getting and maintaining. It does show, however, the aggregate amount expended each year by the firms operating on the Kansas City market on account of advertising, travel and entertainment combined, for the years 1931 to 1937 inclusive. The expenditures for these purposes, by years, are shown below (Respondent's Exhibit A–5):

| | |
|---|---|
| 1937 | $155,191.19 |
| 1936 | 165,083.40 |
| 1935 | 160,720.33 |
| 1934 | 186,307.04 |
| 1933 | 186,019.92 |
| 1932 | 202,706.27 |
| 1931 | 199,813.19 |

In the third hearing, two witnesses testified with respect to these expenses as related to their own particular firms. One of them was of the opinion that observance of the rates prescribed in the order of June 14, 1933, would have lessened the volume received, because his firm was not able to go out and solicit business. He was unable to recall the amount of his expenditures for business getting and maintaining in any of the years or the volume of his receipts (3T, 645, 646). Another witness testified that his lower budget for advertising had tended to reduce his volume, but did not recall how much he had spent for advertising or how much business he had received (3T, 677, 685). He was of the opinion that if his firm should spend more for advertising it would receive greater volume, but refused to state how much additional money he would like to spend or how much additional business he thought he would receive as a result of the additional expenditure (3T, 684). An amount reasonably necessary for business maintenance is an item properly coverable into a schedule of reasonable rates. Any expenditure above this amount directed toward increasing the volume of business should be recouped from the additional business obtained.

148–b. Competition in the commission business is extremely keen and results in a race for getting business which does not manifest itself in a reduction of rates but consists largely in efforts by each market agency to take some of the business away from the other market agencies. Since the rates of the respondents are uniform, there is no inducement for the shipper to select one respondent agency in preference to another because of the rates charged. Business is attached in many cases by reason of ties of personal friendship; in other cases, by the estimate of the character of services rendered. Each agency holds it services out to be of the highest quality and endeavors to convince the shipper of this fact. Under these conditions, the amount expended for busi-

ness getting and maintaining is limited only by what can be afforded under the existing rates, whatever they may be, and by such limits as the respondents impose upon themselves. If excessive expenditures on this account be covered into a rate schedule, every shipper pays to have himself persuaded to send his livestock to one respondent firm rather than to another
353 which, presumably, can serve him equally well. Moreover, as already pointed out, some of the expenditures incurred to get and hold business are covered in general expenditures and in the salaries of salesmen employed, in past at least, on account of the business which they control as well as on account of the salesmanship which they perform. On the basis of all the facts in the record, it is found that the reasonable amount to be covered into rates and paid by the shipper on account of business getting and maintaining should not exceed 10 percent of the total reasonable cost and reasonable profit.

### Administrative and General Expenses

149. The per-head cost on account of administrative and general expenses, namely, telephone and telegraph, directors' fees, legal and auditing, taxes, meals, clearing house, general and miscellaneous, allocated to each of the species, is as follows:

CATTLE AND CALVES

| Firm No. | Number of head | Administrative and general expenses | Firm No. | Number of head | Administrative and general expenses |
|---|---|---|---|---|---|
| 67 | 454 | $0.0033 | 54 | 185,312 | $0.0270 |
| 72 | 2,397 | .0039 | 35 | 53,312 | .0272 |
| 66 | 3,656 | .0039 | 42 | 67,492 | .0272 |
| 37 | 2,122 | .0091 | 48 | 42,359 | .0285 |
| 17 | 11,336 | .0101 | 7 | 15,790 | .0280 |
| 56 | 34,058 | .0138 | 33 | 1,479 | .0292 |
| 61 | 10,731 | .0141 | 53 | 61,113 | .0293 |
| 9 | 3,113 | .0142 | 70 | 38,967 | .0301 |
| 14 | 42,094 | .0164 | 18 | 59,107 | .0309 |
| 15 | 14,983 | .0182 | 82 | 110,449 | .0330 |
| 11 | 1,878 | .0187 | 51 | 22,495 | .0331 |
| 62 | 31,539 | .0188 | 52 | 25,558 | .0334 |
| 71 | 62,038 | .0209 | 73 | 79,012 | .0351 |
| 76 | 9,619 | .0213 | 36 | 86,051 | .0351 |
| 75 | 25,113 | .0220 | 60 | 19,205 | .0356 |
| 65 | 40,303 | .0224 | 59 | 164,860 | .0362 |
| 20 | 32,320 | .0229 | 10 | 119,514 | .0389 |
| 26 | 30,383 | .0229 | 23 | 34,942 | .0400 |
| 16 | 26,673 | .0230 | 84 | 67,609 | .0405 |
| 12 | 67,947 | .0241 | 79 | 11,360 | .0411 |
| 13 | 63,945 | .0244 | 4 | 35,763 | .0448 |
| 29 | 25,581 | .0245 | 63 | 128,888 | .0454 |
| 30 | 23,456 | .0247 | 85 | 61,658 | .0499 |
| 6 | 15,841 | .0250 | 74 | 8,780 | .0529 |
| 32 | 21,690 | .0258 | 78 | 10,819 | .0580 |
| 19 | 12,570 | .0261 | 83 | 122,107 | .0714 |
| 34 | 32,225 | .0263 | 87 | 991 | .0775 |
| 77 | 23,436 | .0265 | 88 | 2,897 | .1130 |
| 46 | 157,432 | .0269 | | | |

HOGS

| | | | | | |
|---|---|---|---|---|---|
| 67 | 6,015 | $0.0008 | 37 | 35 | $0.0054 |
| 72 | 1,077 | .0021 | 9 | 19,031 | .0057 |
| 61 | 9,579 | .0030 | 11 | 2,990 | .0062 |
| 66 | 737 | .0036 | 76 | 8,629 | .0064 |
| 17 | 6,572 | .0054 | 15 | 20,743 | .0072 |

HOGS—Continued

| Firm No. | Number of head | Administrative and general expenses | Firm No. | Number of head | Administrative and general expenses |
|---|---|---|---|---|---|
| 14 | 27,819 | $0.0089 | 53 | 18,764 | $0.0183 |
| 65 | 7,619 | .0097 | 60 | 21,164 | .0189 |
| 29 | 12,619 | .0104 | 16 | 8,498 | .0191 |
| 7 | 41,090 | .0105 | 12 | 28,132 | .0195 |
| 33 | 1,090 | .0114 | 75 | 5,134 | .0195 |
| 6 | 8,168 | .0116 | 4 | 9,552 | .0199 |
| 77 | 10,192 | .0117 | 42 | 11,442 | .0203 |
| 19 | 4,497 | .0126 | 46 | 33,474 | .0207 |
| 62 | 15,810 | .0126 | 25 | 19,201 | .0223 |
| 13 | 40,816 | .0127 | 63 | 150,806 | .0228 |
| 34 | 16,312 | .0127 | 82 | 30,135 | .0232 |
| 32 | 6,196 | .0130 | 54 | 27,122 | .0250 |
| 73 | 34,425 | .0133 | 59 | 70,554 | .0267 |
| 70 | 13,628 | .0139 | 78 | 4,738 | .0285 |
| 355 20 | 2,727 | .0147 | 23 | 1,536 | .0294 |
| 26 | 20,321 | .0155 | 10 | 96,653 | .0307 |
| 71 | 20,323 | .0155 | 30 | 3,439 | .0308 |
| 56 | 8,191 | .0159 | 74 | 2,364 | .0368 |
| 48 | 5,952 | .0163 | 57 | 150,806 | .0376 |
| 51 | 159,184 | .0166 | 83 | 4,078 | .0396 |
| 55 | 21,227 | .0169 | 84 | 11,944 | .0419 |
| 18 | 11,653 | .0173 | 35 | 12,017 | .0445 |
| 79 | 2,969 | .0178 | 88 | 249 | .1294 |
| 36 | 147,922 | .0178 | | | |

SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 67 | 580 | $0.0008 | 19 | 1,252 | $0.0098 |
| 58 | 4,924 | .0027 | 62 | 3,065 | .0102 |
| 50 | 591,028 | .0028 | 13 | 5,688 | .0105 |
| 17 | 756 | .0031 | 12 | 3,439 | .0110 |
| 61 | 991 | .0033 | 7 | 1,295 | .0110 |
| 39 | 205,441 | .0035 | 20 | 572 | .0111 |
| 37 | 96,975 | .0037 | 10 | 94,843 | .0111 |
| 43 | 140,481 | .0037 | 23 | 862 | .0118 |
| 66 | 283 | .0039 | 25 | 3,676 | .0120 |
| 72 | 45 | .0040 | 6 | 1,220 | .0122 |
| 76 | 1,553 | .0043 | 29 | 734 | .0125 |
| 46 | 7,795 | .0043 | 46 | 7,795 | .0129 |
| 37 | 321 | .0044 | 55 | 3,685 | .0131 |
| 15 | 3,854 | .0046 | 36 | 36,575 | .0131 |
| 65 | 2,184 | .0050 | 51 | 6,942 | .0139 |
| 356 5 | 209,208 | .0051 | 33 | 805 | .0142 |
| 84 | 150,283 | .0051 | 35 | 44,036 | .0143 |
| 18 | 3,157 | .0052 | 70 | 2,507 | .0145 |
| 14 | 7,365 | .0053 | 63 | 43,330 | .0154 |
| 79 | 2,273 | .0064 | 71 | 1,414 | .0174 |
| 78 | 2,487 | .0070 | 57 | 753 | .0179 |
| 11 | 175 | .0078 | 49 | 430 | .0210 |
| 82 | 4,320 | .0078 | 60 | 753 | .0219 |
| 73 | 4,035 | .0078 | 82 | 2,007 | .0241 |
| 9 | 598 | .0079 | 78 | 3,432 | .0250 |
| 16 | 1,570 | .0080 | 74 | 333 | .0290 |
| 4 | 1,806 | .0086 | 83 | 2,280 | .0377 |
| 77 | 1,635 | .0088 | 30 | 523 | .0411 |
| 1 | 43,274 | .0092 | 24 | 190 | .0418 |
| 26 | 2,657 | .0093 | 42 | 1,460 | .0619 |

On the basis of these facts and all the information contained in the record, it is found that the following are reasonable per-head costs to be covered into the rates on account of administrative expenses:

357 $.0330 per head as to cattle and calves.
$.0200 per head as to hogs.
$.0050 per head as to sheep.

## Insurance

150. Many of the risks incident to the conduct of the commission business are insurable; others are not. The expenses on account of premiums paid to carry insurable risks are costs properly coverable into a reasonable schedule of commission rates. Mortgage and theft, fire, and workmen's compensation insurance are the three types most generally carried by the respondents. The expenses on account of carrying these types of insurance are ascertainable and can be expressed in terms of per-head costs in the case of each species. Mortgage and theft insurance premiums are quoted by insurance companies in standard cars defined as "25 head of cattle, 60 head of calves, 80 head of hogs, and 100 head of sheep." The rates are 10 cents per carload of livestock irrespective of species. This is $.00357 per head for cattle and calves, $.00125 per head as to hogs, and $.001 per head as to sheep.

151. Workmen's compensation insurance is optional in the States of Missouri and Kansas, in which the respondents conduct their business. Some of the respondents carry this type of insurance; others do not. Nevertheless, it is a legitimate cost to be covered into rates. A sufficient allowance should be made in the rates prescribed to enable each of the respondents either to carry this type of insurance or to set up a reserve against losses incurred. The cattle facilities of the stockyard company, where the majority of the respondents carry on their business, are located mainly in the State of Missouri, while the hog house is located in the State of Kansas. The auditor for the respondents segregated the expenses which he attributed to workmen's compensation on the basis of salaries paid in the State of Kansas and those paid in the State of Missouri. Premiums on account of this type of insurance are all on the basis of employee pay roll. The yardwork pay roll on account of hogs is occasioned largely in the State of Kansas, and the yardwork pay roll on account of cattle and calves and sheep is occasioned largely in the State of Missouri. The office pay roll is occasioned jointly by all of the livestock handled. The auditor for the respondents attributed to all the firms represented by him $993.07, premiums on account of workmen's compensation for yard workers, to the State of Kansas; $7,048.27 to yard workers in Missouri; and $93.47 to office workers. For all practical purposes, he attributed $993.07 to hogs; $7,048.27 to cattle and calves and sheep; and $93.47 to cattle and calves, hogs, and sheep. The two accountants were in practical agreement as to the amount necessary to provide for insurance premiums. The accountant for the Government set up $911.76 for all respondents for fire-insurance premiums, and the accountant for the respondents set up $841.40.

152. In considering the reasonable per-head expense on account of some other functions, the experience of each firm has been gone into and the normal arrived at on the basis of the experience of each individual firm. The use of an average based upon an aggregate of the expenses of the firms under consideration has
358 been condemned and the reason therefor given. In the case of expenses in which the amounts involved are so small, the consideration of the market as a whole or the consideration of the experience of each of the respondents would lead substantially to the same result. Because of this fact, the figures for the market as a whole are used in arriving at the reasonable per-head costs on account of insurance.

153. Premiums for workmen's compensation on account of cattle and calves and sheep have been allocated to these species on the basis of the yard pay roll occasioned by each. All premiums paid in the State of Kansas have been attributed to hogs. Office workmen's compensation premiums and fire insurance premiums are occasioned by all species. The sum of $93.47, office workmen's compensation premiums, and $841.40, fire insurance premiums, has been allocated to the various species on the basis of account sales and account purchases. These allocations result in attributing $7,219 to cattle and calves; $1,240 to hogs; and $517 to sheep. The per-head expenditure on this basis is $.0032 for cattle and calves; $.0012 for hogs; and $.0008 for sheep.

153–a. Under the heading of "risk expense," the Government accountant included the premium paid by the respondents on account of the bonds carried by them. This expense was incurred chiefly on account of the bonds conditioned upon the making of prompt and faithful accounting for the proceeds of the sale of livestock. These bonds are based upon the value of the livestock handled. The total bond premium expense in 1931 was $6,335.02. It is equitable to distribute this amount to species on the basis of the value of the livestock of each species. The respondents' accountant determined the gross proceeds of the sale of livestock of each species for 16 firms handling approximately 30 percent of the volume. For the basis of distributing risk expenses, the Government accountant used the value of $40 per head for cattle and calves, $12 per head for hogs, and $5.50 per head for sheep. The use of the valuation employed by either accountant will give approximately the same result. Using the value established by the respondents' accountaint as a basis for the distribution of the expense for bond premiums, the unit cost per head is $.002 as to cattle and calves, $.0006 as to hogs, and $.0002 as to sheep.

154. This results in a per-head allowance on account of the types of insurance discussed herein of $.00877 per head for cattle

and calves, $.00305 per head for hogs, and $.0015 per head for sheep.

Interest on Capital

155. A legitimate cost to be covered into rates and paid by shippers of livestock is a reasonable amount of interest on the capital necessary in the conduct of the commission business. Inasmuch as a separate allowance to cover the uninsurable risks and contingencies is hereafter provided for in profit, the reasonable rate of return herein found represents interest on the use of capital.

156. Three witnesses testified in the second hearing as to what constitutes a reasonable rate of return under the condi-
359 tions above stated. Two of them were bankers called by the respondents and the third an economist called by the Government. One of the bankers and the economist were in substantial agreement. The economist, who testified first, gave it as his opinion that an allowance of 6 percent interest on the value of the fixed assets would be reasonable and that a rate somewhere between 6 and 8 percent on the amount of liquid working capital necessary in the business would be reasonable. One of the bankers called by the respondents gave it as his opinion that the Secretary of Agriculture would act fairly in arriving at a rate of return if he based his conclusions upon this opinion. The other banker called by the respondents stated that, in his judgment, a reasonable rate of return would be 20 percent. The inference to be drawn from his testimony, however, is that he had in mind an interest rate high enough not only to pay for the use of the capital but also to cover the risks incident to the business. The bank of which he is an official assesses charges against various of the respondents for the temporary overdrafts they make at his bank. The rates charged vary and depend, in part upon the average amount of the deposits carried by them. He stated that the charge made by his bank to the respondents on these overdrafts would average around 7 percent.

157. In determining the reasonable amount of capital to be considered in the case of each of the respondents, the amount as determined by the accountant for the respondents has been considered. A segregation of capital has been made into fixed and working capital. Fixed capital has been taken to be the amount as determined by the accountant for the respondents represented by the following items: namely, furniture, fixtures, and equipment; materials and supplies; Exchange memberships; and mailing lists and customer records. On the value of these, interest at 6 percent has been computed in the case of each firm. On the amount of working capital determined by the accountant for the

respondents, interest has been computed at 7 percent. The sum of the interest on fixed assets and interest on working capital, expressed in cents per head, has been set up as to each firm.

158. The following tables set forth, by firms, the per-head interest on account of selling, calculated on the basis stated above:

CATTLE AND CALVES

| Firm No. | Number of head | Interest | Firm No. | Number of head | Interest |
|---|---|---|---|---|---|
| 48 | 36,376 | $0.0022 | 20 | 27,615 | $0.0139 |
| 19 | 9,941 | .0031 | 53 | 26,901 | .0141 |
| 84 | 62,243 | .0051 | 26 | 28,553 | .0144 |
| 87 | 953 | .0063 | 7 | 14,931 | .0147 |
| 80 | 138,133 | .0055 | 61 | 10,042 | .0147 |
| 34 | 26,859 | .0060 | 78 | 7,425 | .0153 |
| 54 | 117,345 | .0069 | 15 | 12,797 | .0155 |
| 55 | 47,630 | .0070 | 74 | 6,732 | .0162 |
| 83 | 45,799 | .0071 | 9 | 2,191 | .0163 |
| 82 | 90,682 | .0076 | 29 | 24,297 | .0174 |
| 51 | 22,013 | .0078 | 6 | 10,253 | .0178 |
| 46 | 99,113 | .0084 | 16 | 23,073 | .0184 |
| 65 | 89,771 | .0092 | 62 | 28,109 | .0187 |
| 13 | 55,362 | .0093 | 77 | 21,031 | .0187 |
| 65 | 35,698 | .0097 | 35 | 55,998 | .0189 |
| 360 56 | 29,689 | .0100 | 4 | 33,160 | .0193 |
| 42 | 59,341 | .0101 | 17 | 9,707 | .0215 |
| 70 | 32,595 | .0102 | 52 | 18,614 | .0231 |
| 18 | 46,755 | .0109 | 76 | 6,872 | .0265 |
| 79 | 9,475 | .0115 | 66 | 1,508 | .0324 |
| 75 | 20,363 | .0116 | 60 | 14,265 | .0374 |
| 25 | 42,045 | .0118 | 88 | 2,273 | .0453 |
| 71 | 53,940 | .0122 | 72 | 1,934 | .0494 |
| 14 | 35,159 | .0125 | 11 | 1,708 | .0529 |
| 23 | 26,219 | .0126 | 67 | 382 | .0594 |
| 73 | 73,218 | .0125 | 37 | 2,122 | .0634 |
| 12 | 59,216 | .0130 | 33 | 1,218 | .0737 |
| 30 | 22,770 | .0134 | | | |

HOGS

| | | | | | |
|---|---|---|---|---|---|
| 61 | 8,801 | $0.0007 | 6 | 7,962 | $0.0051 |
| 19 | 3,068 | .0009 | 16 | 8,425 | .0051 |
| 59 | 64,906 | .0016 | 23 | 1,536 | .0055 |
| 51 | 156,853 | .0017 | 4 | 9,171 | .0055 |
| 55 | 20,575 | .0020 | 62 | 15,594 | .0056 |
| 54 | 23,261 | .0021 | 15 | 20,406 | .0060 |
| 46 | 32,905 | .0025 | 17 | 6,258 | .0063 |
| 56 | 7,899 | .0027 | 35 | 11,775 | .0067 |
| 63 | 116,670 | .0027 | 52 | 6,193 | .0071 |
| 70 | 13,427 | .0028 | 76 | 7,986 | .0078 |
| 84 | 11,223 | .0028 | 87 | 226 | .0078 |
| 13 | 40,786 | .0028 | 82 | 29,780 | .0081 |
| 18 | 11,358 | .0029 | 84 | 9,980 | .0086 |
| 42 | 13,015 | .0031 | 73 | 18,720 | .0096 |
| 65 | 7,610 | .0032 | 66 | 737 | .0103 |
| 71 | 20,141 | .0036 | 60 | 19,875 | .0107 |
| 48 | 5,803 | .0036 | 78 | 3,260 | .0111 |
| 25 | 18,661 | .0036 | 79 | 2,989 | .0126 |
| 20 | 3,727 | .0039 | 77 | 9,507 | .0129 |
| 14 | 27,771 | .0039 | 72 | 1,645 | .0134 |
| 12 | 27,121 | .0039 | 11 | 2,990 | .0159 |
| 53 | 18,709 | .0041 | 76 | 4,923 | .0174 |
| 7 | 37,426 | .0043 | 67 | 5,931 | .0177 |
| 26 | 20,075 | .0044 | 74 | 2,364 | .0185 |
| 9 | 17,642 | .0048 | 33 | 1,660 | .0218 |
| 39 | 12,425 | .0048 | 53 | 3,202 | .0634 |
| 30 | 3,489 | .0048 | 88 | 422 | .0042 |

361 SHEEP

| | | | | | |
|---|---|---|---|---|---|
| 19 | 741 | $0.0003 | 12 | 2,450 | $0.0028 |
| 51 | 6,196 | .0007 | 7 | 1,295 | .0031 |
| 50 | 191,587 | .00076 | 73 | 3,770 | .0031 |
| 44 | 248,022 | .00084 | 16 | 350 | .0033 |
| 54 | 565,861 | .00096 | 77 | 1,532 | .0034 |
| 55 | 2,947 | .0012 | 17 | 430 | .0037 |
| 13 | 5,687 | .00137 | 4 | 1,583 | .0038 |
| 56 | 4,924 | .0014 | 76 | 1,356 | .0038 |
| 63 | 24,716 | .00144 | 84 | 103,847 | .0039 |
| 5 | 205,880 | .00145 | 66 | 283 | .0044 |
| 61 | 638 | .0016 | 78 | 3,432 | .0046 |
| 70 | 2,484 | .0016 | 1 | 42,372 | .00492 |
| 46 | 7,092 | .0017 | 33 | 805 | .00493 |
| 87 | 93,327 | .00175 | 20 | 511 | .0049 |
| 15 | 3,805 | .0018 | 82 | 1,927 | .0052 |
| 65 | 1,284 | .0018 | 75 | 2,487 | .0062 |
| 18 | 2,732 | .0020 | 79 | 2,237 | .0062 |
| 25 | 3,067 | .00212 | 88 | 534 | .0063 |
| 62 | 3,063 | .0022 | 29 | 734 | .0068 |
| 26 | 2,544 | .00229 | 11 | 175 | .0084 |
| 9 | 598 | .0023 | 37 | 321 | .0084 |
| 67 | 500 | .0023 | 14 | 5,916 | .00867 |
| 35 | 40,948 | .00245 | 32 | 805 | .0094 |
| 6 | 1,220 | .0026 | 83 | 1,545 | .0235 |
| 52 | 4,081 | .0026 | | | |

It is found that the following are reasonable allowances per head on account of interest:

$.015 per head as to cattle and calves.
$.007 per head as to hogs.
$.004 per head as to sheep.

## Profits

159. In addition to producing reasonable per-head costs incident to the handling of the different species of livestock, reasonable rates should provide also a per-head profit—that is, compensation for management and the carrying of uninsurable risk. The two cooperative market agencies and some of the respondents are managed by employees. The remuneration received by employee-managers gives some indication as to what efficient management costs. In 1929 two firms had employee-managers who did no selling. The cost of management was 92 cents per car in the case of one, and 99 cents in the case of the other. In 1931 the same two firms were paying a dollar per car and 80 cents per car. A per-head allowance on the basis of one dollar a car as to each species has been made on account of management.

160. The risks assumed by respondents may be said to fall roughly into three general classes: First, those against which insurance actually is carried by at least some of the re-
362 spondents; second, those of such a nature that insurance against them is conceivable, though not actually obtainable; third, those involving a decline in or cessation of respondents' businesses. The first class has been covered by an allowance in the reasonable cost under the item "insurance."

161. The second class comprises whatever liability respondents assume when they sell livestock the title to which is defective, errors entering into accounting processes, failure of purchasers to make payments, litigation arising on account of bank failures, freight undercharges, and sales of diseased or defective livestock. The experience of the respondents as reflected in the audits of their books and accounts for the years 1929 to 1931 indicate that the losses suffered on account of the risks of this class amount to only a few cents per car. A per-head allowance on the basis of 10 cents per car as to each species has been made on account of this class of uninsurable risk.

162. The third class consists of the danger that, through economic changes or failure of those in charge of the businesses properly to conduct them, the volume of business enjoyed may decline even to the point whre it becomes impracticable to continue the conduct of the business. It seems quite clear that nothing should be included in the rates to cover risks or losses due to bad management. It may be that the same is true of risks and losses arising from economic changes. But, regardless of who should bear these risks, there is no practicable way of appraising them. The rates hereinafter prescribed represent something more than the reasonable cost plus reasonable profit. (See paragraph 163–a.)

## Summary of Reasonable Selling Costs Plus Reasonable Profits

163. A summary of the foregoing findings as to reasonable per-head costs and reasonable profits for selling each species of livestock arriving at the Kansas City Market is as follows:

| | Cattle and calves | Hogs | Sheep |
|---|---|---|---|
| Salesmanship | $0.1500 | $0.0353 | $0.0140 |
| Yarding salaries | .0750 | .0900 | .0060 |
| Yarding expenses | .0140 | .0060 | .0004 |
| Office salaries | .0625 | .0300 | .0100 |
| Office expenses | .0300 | .0175 | .0040 |
| Business getting and maintaining | .0460 | .0180 | .0050 |
| Administrative and general expenses | .0080 | .0200 | .0050 |
| Insurance | .0068 | .0031 | .0015 |
| Interest | .0150 | .0070 | .0040 |
| Total cost | .4343 | .1669 | .0538 |
| Profit: | | | |
| To cover management | .0350 | .0133 | .0040 |
| To cover uninsurable risks | .0035 | .0014 | .0004 |
| Total reasonable cost and reasonable profit | .4628 | .1816 | .0582 |

363 163-a.—On August 15, 1938, when the respondents filed their exceptions to the tentative order, they submitted to the Secretary an "Attachment to Exceptions Filed August 15, 1938." This attachment shows, for each species, the per-head revenues which the rates set out in the tentative order would have produced when applied to the 1931 business of the various respondents and the average per-head revenues on the total business handled by these respondents for the year 1931. The average per-head revenue on cattle and calves was $4779; that on hogs, $.2096; and that on sheep, $.0778. The per-head revenues for the various species are in excess of the total per-head reasonable costs and reasonable profits as shown in paragraph 163 by $.0151 as to cattle and calves, $.0280 as to hogs, and $.096 as to sheep. If the reasonable unit costs and profit per head as found in paragraph 163 be applied against the 1931 volume of the respondents here, the total reasonable costs of handling the livestock bought and sold is $1,357,276.15. If the per-head revenues producible under the rates prescribed herein be applied against the same volume, the total revenues producible in 1931 are $1,458,199.72. The spread between the revenues producible under reasonable rates in 1931 and the reasonable costs and profit for the same year is $100,923.57.[1] The spread above reasonable costs and

364 profits of the $100,923.57 has been provided for in the rates, in order to establish a cushion against such errors as

[1] Government's Exhibit No. 115, pages 65 to 68, gives, by firms, the total volume of each species bought and sold. The per-head revenues producible under the rates prescribed herein are shown on pages 1 and 2 of "Attachment to Respondents' Exceptions filed September 15, 1938."

| | Head | Reasonable cost-order, par. 163 | Total cost |
|---|---|---|---|
| Selling and buying: | | | |
| Cattle | 2,023,647 | | |
| Calves | 260,560 | | |
| Total cattle and calves | 2,284,207 | .4628 | $1,057,131.00 |
| Hogs | 1,044,948 | .1816 | 189,762.56 |
| Sheep | 1,896,608 | .0582 | 110,382.59 |
| Total all species (100%) | | | 1,357,276.15 |

| | | Per head revenues, "attachment" | Total revenue |
|---|---|---|---|
| Selling and buying: | | | |
| Cattle | 2,023,647 | | |
| Calves | 260,560 | | |
| Total cattle and calves | 2,284,207 | .4779 | $1,091,622.52 |
| Hogs | 1,044,948 | .2096 | 219,021.10 |
| Sheep | 1,896,608 | .0778 | 147,555.10 |
| Total all species (107.4%) | | | 1,458,199.72 |
| Spread between revenues and reasonable costs and reasonable profits (7.4%) | | | 100,923.57 |

possibly may have crept into the mathematical computations which have been necessary, against possible errors of judgment on the part of the rate maker, and to cover certain expenses hereinbelow discussed, the exact amount of which is not known but the maximum amount of which is ascertainable. The mathematical computations made in connection with this case and the statistics upon which these computations are based have been under scrutiny for six years. The results of the exercise of judgment on the part of the rate maker have been subject to attack in numerous briefs and exceptions, and through oral argument. There should now be little or no chance of mathematical or statistical error. The fairest judgment of which the rate maker is capable has been passed upon those matters necessitating the exercise of judgment. There are two expense items, the exact amount of neither of which is a matter of record. The maximum possible amount payable is ascertainable. This maximum has been ascertained and provided for in the spread. The two expense items to which reference is made are the taxes payable under the Social Security Act, not in effect at the close of the second hearing, and the cost of the hearings and litigation in this case. The Social Security Act became effective January 1, 1936, insofar as it relates to unemployment insurance, and on January 1, 1937, insofar as it relates to old-age pensions. In 1936 the tax for unemployment insurance was 1 percent of the employee pay roll of those concerns which had eight or more employees at any one time during that calendar year. On January 1, 1937, the tax on account of unemployment insurance increased to 2 percent. The old-age tax for the year 1937 was 1 percent of the employee pay roll of all employers who had one or more employees. Judicial notice is taken of the Social Security Act and the taxes payable under it for such a period as they were in effect between July 23, 1933, and November 1, 1937. For purposes of computation, the two full years of 1936 and 1937 are used in computing the amount of these taxes. It is assumed that each market agency on the Kansas City market, the two cooperative market agencies not respondents here included, paid these taxes. It is assumed also that each of the market agencies employed a sufficient number of persons to bring it within the scope of this tax. The tax so computed amounts approximately to $5,000 a year during the period the rates now under investigation were in effect. This is the maximum amount which could have been payable by the respondents. The respondents claim that the total cost of the adminisrative hearings and the litigation in the courts growing out of these hearings has been in excess of $165,000. They do not divide this amount as between the costs incident to the administrative hearing and those incident

to litigation. This case has been before the District Court three times and before the Supreme Court of the United States four times. It is a reasonable assumption that at least one-half of the $165,000, or $82,500, was incurred on account of the court proceedings. If $82,500 be estimated as the cost on account of administrative hearings, and be amortized over a period of ten years, the annual expense incident to such hearings would be $8,250. The sum of the $5,000, on account of the social-security taxes as computed above, and the cost of $8,250 on account of the administrative hearings is $13,250. This amount is not provided
365 for in the per-head unit costs as found in paragraph 163.

If from the cushion of $100,923.57 there be deducted the $13,250 annual expense on account of social-security taxes and administrative hearings, there remains an unencumbered spread of $87,673.57.

164. The audits covering the respective years 1929 and 1931 show, as a rule, only slight differences in the expenses of the respondent firms who operated in both of those years. There occurred, too late to be reflected in the audits for 1931, increases in certain of respondents' lesser expenses, such as postage and taxation, but through salary and wage cuts, also made too late to be reflected in the audits, there occurred considerable decreases in one of the major expenses of the business. It follows, therefore, that the above-stated costs cover the situation as it existed before the depression brought about reductions in expenses as revealed in respondents' Exhibits A–5 and A–13. Normal costs rather than depression costs have been covered into the rates hereinafter prescribed.

## Buying Costs

165. Most of the respondent commission firms and all of the respondent order buyers are engaged in the buying of livestock on a commission basis. The commission men consider their buying activities as supplementary to their selling activities. Some of the salesmen also buy. In some firms there are those employed as buyers only. For the most part, the same personnel employed in one activity is also engaged in the other. This is particularly true with respect to the office and yard forces. Most of the items of costs incident to the business of the commission firms are incurred jointly in selling and buying. Their unit costs for buying are the same in amount as those shown above for selling, except as to the items for salesmanship, and for interest, which is greater.

166. The record indicates that in the normal course of business a competent buyer can buy as many animals of a species as an equally competent salesmen can sell. This fact, coupled with

buying salaries paid, indicates that the cost to the respondent commission men for buying a unit of livestock is somewhat less than the cost of selling a like unit. Somewhat more capital is needed in the buying of livestock than in the selling of it. The interest cost is, therefore, somewhat greater.

167. An analysis of the costs incurred by those respondents engaged solely in the order-buying business leads to the conclusion that their unit costs for buying do not vary greatly from those incurred by the commission men in their buying activities.

168. On the basis of all the facts of record and the inferences to be drawn from the record, it is found that the rates charged for buying livestock on the Kansas City market should not exceed those for selling livestock.

366 RATE STRUCTURES

169. Livestock does not arrive at market in standard units. It may arrive in lots of from one to many head. On the one hand, such consignments may be of the same grade and may sell at one price, and require only one draft; on the other hand, it may consist of many classes sold to various buyers and require numerous weight drafts. Obviously, the work occasioned in handling livestock under such circumstances will vary greatly, and the cost of performing the service on different consignments will vary also. A tariff of rates and charges constructed to meet each variation and to assess precisely the cost occasioned by handling each consignment against that particular consignment would be unduly complex. A schedule of rates which attempted to do exact justice by every consignment would be so complex as to be difficult of interpretation and impracticable of application. A tariff simple enough to be practicable and easy of application will work some inequities in some individual cases. A reasonable schedule of rates should do as nearly exact justice as is practicable. Therefore, the rate maker's problem is to find a structure which, when applied to the particular businesses under consideration, will avoid as far as possible unwieldy complexity on the one hand and, on the other, a simplicity which brings about too many arbitrary distinctions and too much inequity. From time to time, attempts have been made to smooth out all arbitrary distinctions. The result has been not only a complexity undesirable in itself but also the creation by such complexity of new inequities. It is recognized, therefore, that any tariff structure which may be adopted can be applied to circumstances which, though not unique, are unusual, and thereby shown to work inequities. Bearing this in mind, balancing advantage against disadvantage, it is believed that a tariff structure only sufficiently complex to

avoid serious inequities with respect to normal transactions is to be preferred.

170. Except as to Tariff No. 3, hereinafter discussed, market agency rate schedules at Kansas City have in the past been based quite generally upon the car lot of livestock as the unit of charge. The reason for this has been that the car lot has been the unit of handling. Until comparatively recently practically all the livestock handled by market agencies at the Kansas City stockyard arrived there in railroad cars. The sales pens in the stockyard were constructed to hold one car lot comfortably and conveniently. It was the custom of buyers to buy by the car lot. In probably the majority of instances the single car lot was synonymous with the single consignment. With the growth of the practice of bringing livestock to market by motor truck and the increasing custom of buyers to purchase animals in less than car lots, as hereinbefore described, these conditions changed.

171. The filing by the great majority of the respondents of their Tariff No. 3 raised in this proceeding an issue not theretofore present in commission rate determinations made by the Secretary of Agriculture: namely, whether the rates pre-
367 scribed by this order should be set up in the customary structure or according to that desired by the respondents, or in same modification or one or the other of those structures.

172. The record here shows that the consignment is the unit of handling. The consignment is, therefore, the unit of cost. Many items of cost attach to the consignment in substantially the same amount, regardless of whether it contains many or few animals. The identity of a consignment must be preserved throughout its entire handling in the stockyard; it must be separately accounted for by the office force. Some items of cost tend to increase as the number of animals in a consignment becomes greater.

173. Certain modes of arrival of animals at the stockyard affect the number of animals contained in the respective consignments. On the whole, a thousand head of animals arriving by truck will represent more separate consignments than a similar number arriving by rail. This fact has caused it to be said that the so-called "truck-ins" are more expensive to handle than the rail arrivals, but analysis of the costs shown in the record, as well as the opinions of competent witnesses therein contained, compel the conclusion that it is not the mode of arrival but the size of the consignment which fixes the per-head cost of handling the animals. To base differentials in rates upon the modes of arrival is therefore to attack the problem indirectly rather than directly and produces different charges for handling the same species, number, weight, kind, grade, and quality of animals in two separate consignments merely because one happened to come to

the market in a vehicle propelled by gasoline and the other is one drawn by steam.

174. The various commission rate tariffs in force from time to time at the Kansas City stockyard since the effective date of the Packers and Stockyards Act, 1921, are in the record. At least since that date the tariffs have always contained some rates stated on a head basis, and they have also recognized at least one rate distinction based on differences in weights. Reference is here made to the common provision that bovine animals weighing on the average 400 lbs. or less, and called "calves", are handled at rates considerably lower than those weighing more than 400 lbs., and called "cattle." That this is purely a weight distinction becomes apparent when it is borne in mind that it is the average per-head weight of the entire draft which controls and that thereby a 1,500 lb. bull may become a calf by being weighed together with a sufficient number of bovines weighing from 200 to 300 lbs. each.

175. In the filing of Tariff No. 3 respondents sought to readjust the structure of their schedules to the changed character of their business. In the formulation of this new tariff they tested certain suggested schedules by practical applications of them to the transactions they actually were handling. By a process of trial and error, they arrived at a tariff which, though not going so fas as some of them advocated, nevertheless constituted a step in the direction of a structure better fitted to the business of today than was the structure which it replaced.

368 176. At the second hearing in this proceeding, this tariff structure was subjected to close scrutiny and analysis. The evidence compels the conclusion that while some inequities would result from an application of the principles upon which it was based, nevertheless, on the whole, such inequities are both few and less severe than those which would result from the application of the principles which had been discarded. Certain characteristics of this Tariff No. 3 appear to do violence to the basic principles upon which it rests. There is, for instance, no difference in the rates for calves or cattle coming in by truck, as compared with those arriving by rail, but 5 cents more per head is charged for truck-in yearlings than for those coming in railroad cars, and quite generally the rates on truck-in sheep are higher than for those coming by rail. Also, a lower rate is made for so-called "yard sales" or "seconds," than for freshly arriving livestock.

177. The tariff structure adopted in this order eliminates these and other inconsistencies, but otherwise follows in structure the aforesaid Tariff No. 3. It contains for the bovine species a weight class known as "yearlings," and a weight distinction as between light swine or pigs and heavy swine or hogs. In recognition of the

fact that, as heretofore stated, the cost of handling a consignment does not increase directly in proportion to the increased number of head in the consignment, the tariff structure here adopted uses a consignment charge graduated according to the number of head in the consignment.

178. That which has been said with respect to the structure of the schedule for selling applies also to the structure for buying.

## XXII. The Reasonableness of Rates Under Investigation

179. Upon the basis of the reasonable costs hereinbefore determined, and upon a consideration of the entire record, it is found that respondents' schedules of rates and changes now under investigation contain rates and charges which are unreasonable and unjustly discriminatory.

## XXIII. Reasonable Rates

180. Upon the basis of all the foregoing and the entire record, it is found that rates not in excess of the following are schedules of just and reasonable rates for stockyard services rendered by the respondents during the period from July 23, 1933, to November 1, 1937.

### Article I—Definitions

Calves are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

Yearlings are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

369 Cattle are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 801 pounds or over.

Pigs are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

Hogs are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

A Draft is all those animals in one consignment weighed as a single sales or purchase classification.

A Consignment, for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day; provided, however, that when the livestock of several owners arrives in one car, and in not more than one car, each species in that car lot shall be considered as one consignment.

A Consignment, for the purpose of assessing buying charges, is

all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

A Person is an individual, a partnership, a corporation, and/or an association of any such acting as a unit.

## Article II—Selling Charges

### Section A—Calves, Yearlings, and Cattle

| | Per head |
|---|---|
| Calves: | |
| Consignments of one head | 40¢ |
| Consignments of more than one head: | |
| 1 to 20 head, inclusive | 25¢ |
| Each head over 20 | 15¢ |
| Yearlings: | |
| Consignments of one head | 80¢ |
| Consignments of more than one head: | |
| 1 to 20 head, inclusive | 45¢ |
| Each head over 20 | 25¢ |
| Cattle: | |
| Consignments of one head | 80¢ |
| Consignments of more than one head: | |
| 1 to 20 head, inclusive | 70¢ |
| Each head over 20 | 50¢ |

### Section B—Swine

| | |
|---|---|
| Pigs: | |
| Consignments of one head | 35¢ |
| Consignments of more than one head: | |
| 1 to 40 head, inclusive | 20¢ |
| Each head over 40 | 5¢ |
| Hogs: | |
| Consignments of one head | 35¢ |
| Consignments of more than one head: | |
| 1 to 40 head, inclusive | 25¢ |
| Each head over 40 | 5¢ |

### Section C—Sheep or Goats

| | |
|---|---|
| Sheep or Goats: | |
| Consignments of one head | 35¢ |
| Consignments of more than one head: | |
| For the first 10 head in each 300 head | 25¢ |
| For the next 50 head in each 300 head | 15¢ |
| For the next 60 head in each 300 head | 5¢ |
| For the next 130 head in each 300 head | 2¢ |
| For the next 50 head in each 300 head | 1¢ |

## Article III—Extra Service Charges

The following extra-service charges are applicable to all species:

| | |
|---|---|
| For each additional weight draft over 3, on account of sales classification | 15¢ |
| For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1 | 5¢ |

371 ARTICLE IV—BUYING CHARGES

The rates for buying livestock of the various species shall not be in excess of those for selling like species.

DETERMINATION

181. It is hereby determined that rates not in excess of the rates contained in the schedule set forth above were just and reasonable rates for stockyard services rendered by respondents during the period from July 23, 1933, to November 1, 1937. The said determination will furnish a proper basis for the distribution or other disposition of the funds now impounded in the Registry of the United States District Court for the Western District of Missouri, Western Division, in the case of F. O. Morgan et al. v. United States of America and the Secretary of Agriculture, In Equity No. 2328.

ORDER

It is ordered that the respondent market agencies, and each and every one of them, on and after thirty days from the date hereof, cease and desist from charging, collecting, demanding, or retaining for any stockyard service rendered by them during the period from July 23, 1933, to November 1, 1937, any rate, charge, or revenue, in excess of the rates and charges herein found to be reasonable.

It is further ordered that the order of October 14, 1937, issued in this proceeding, shall remain in full force and effect until the further order of the Secretary, in accordance with the stipulation contained therein.

It is further ordered that a copy hereof be served by registered mail or in person on each of the respondents.

Done at Washington, D. C., this 20th day of June 1939. Witness my hand and the seal of the Department of Agriculture.

H. A. WALLACE,
*Secretary of Agriculture.*

372 In United States District Court

*Order to show cause*

Filed July 3, 1939

Now on this 3rd day of July 1939 come the respondents herein, and present to the undersigned Judges of this Court a motion to enter an order requiring the petitioners herein to show cause why the moneys now impounded in the registry of this Court in the

cause should not be restored and repaid to the persons from whom petitioners have collected the said moneys. Counsel for the respondents and counsel for the petitioners are present and the Court has been fully advised in the premises.

It appearing that there is now impounded in the registry of this Court more than $586,000, which moneys petitioners have paid into the registry of this Court pursuant to the order of this Court entered July 22, 1933, and from time to time continued in effect by further orders of this Court; and it further appearing that the aforesaid moneys represent the amount by which the rates and charges imposed for stockyard services performed between the period July 23, 1933 and November 1, 1937, by petitioners at the Kansas City Stock Yards exceed the rates and charges determined by the Secretary of Agriculture, in an order dated June 20, 1939, to be the just and reasonable rates and charges for such services;

It is hereby ordered that petitioners appear before this Court at Kansas City, Missouri, on the 20th day of August 1939, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, and show cause why an order should not be entered directing and commanding that the moneys impounded in the registry of this Court in this cause be immediately restored and repaid to those persons from whom petitioners have collected the aforesaid moneys,
373 or to their duly designated representatives or assigns.

Dated this 3rd day of July 1939.

ARBA S. VAN VALKENBURGH,
*Judge.*

ALBERT L. REEVES,
*Judge.*

MERRILL E. OTIS,
*Judge.*

[File endorsement omitted.]

In United States District Court

*Joint and several return of petitioners to order to show cause*

Filed Sept. 9, 1939

Now comes F. O. Morgan, doing business as F. O. Morgan Sheep Commission Company, et al., petitioners, by their attorneys, Frederick H. Wood and John B. Gage, answering the motion of respondents for order to show cause and as and for their return to such order as entered herein on the 3rd day of July 1939, respectfully state to the Court:

1. The moneys deposited in the Registry of this Court by petitioners, referred to in respondents' motion to show cause, should be restored and repaid by the Clerk of this Court to petitioners and their assigns in the several amounts in which petitioners and each of them have made such deposits, pursuant to orders heretofore entered by this Court in these causes, and should not be distributed or paid over to any other person or persons as prayed in respondents' motion to show cause.

2. The rates and charges collected by petitioners for stock-
374 yards services performed at the Kansas City Stockyards between July 23, 1933, and November 1, 1937, were just, reasonable, and nondiscriminatory rates and charges, lawfully collected under a prior valid order of the Secretary of Agriculture pursuant to the provisions of the Packers and Stockyards Act of 1921, and the rates and charges set forth in paragraph 180 of Exhibit A attached to the motion of respondents (a purported order of the Secretary of Agriculture under date of June 20, 1939) do not afford an appropriate, equitable, just or lawful basis for action by this Court in determining the proper disposition of said moneys or any part thereof.

3. Petitioners deny that said moneys or any part thereof were unlawfully or unjustly collected from any person or persons, and assert upon the facts of record that equity and justice, as well as the provisions of the Packers and Stockyards Act, 1921, the conditions specified in the orders of this Court heretofore entered, and the holdings and opinions of the Supreme Court of the United States in prior appeals taken in these causes, referred to in the motion of respondents, now require that such amounts be returned to petitioners or their assigns as their interests may appear.

4. Petitioners deny that the purported order of the Secretary, dated June 20, 1939, and attached to respondents' motion as Exhibit A, was made or entered by the Secretary of Agriculture in the exercise of powers conferred upon him by the Packers and Stockyards Act of 1921, or upon and after full hearing, or that the basic conclusions and determinations set forth and stated in said order, either of fact or law, or any of them, were or are supported by substantial evidence. On the contrary petitioners allege that petitioners, and each of them, in connection with the making of
375 said purported order of the Secretary of Agriculture were denied the full and fair hearing required by said Act and by the Fifth Amendment of the Constitution of the United States, and further allege, as hereinafter more particularly set forth, that the conclusions in such order essential to the rate determinations therein purported to be made are directly in conflict with all of the material and relevant evidence before the Secretary and also in conflict with findings of evidentiary fact set forth in said order.

Petitioners allege that each and all of the determinations in said purported order of June 20, 1939, were and are arbitrary, capricious and made by persons other than the Secretary of Agriculture as a result of pre-judgment of the issues involved without dispassionate or fair consideration or appraisal of the evidence relating to such determinations.

5. Petitioners affirmatively allege that by reason of each and all of the following defects and irregularities in the proceedings resulting in the purported order issued by the Secretary of Agriculture on June 20, 1939, said order is invalid and the determinations therein made or purported to be made are inappropriate for use by this Court as a basis for the distribution of the moneys in the Registry of this Court referred to in said motion:

(1) The Secretary, instead of following a course of procedure which he had himself described as appropriate and essential to a fair hearing in a public statement issued on the third day of May 1938, appointed one John C. Brooke, Esq., a member of the Office of the Solicitor of the Department of Agriculture, charged with the duty of prosecuting inquiries under the Act, and a colleague of the attorneys upon whom the duties of prosecution rested,
376 and of the attorneys who had written and drafted the invalidated order of June 14, 1933, as the Trial Examiner and directed him to hear such exceptions as petitioners might desire to offer to said order of June 14, 1933, which had previously been, by his order, served upon petitioners as a so-called Tentative Order.

(2) The Secretary notified petitioners he was entered into a proceeding for the purpose of determining whether or not to validate nunc pro tunc as of June 14, 1933, the aforesaid invalid order. The Secretary then proceeded to deny motions of petitioners challenging the regularity and propriety of such procedure without allowing petitioners opportunity to present to him oral or written arguments thereon, although such opportunity was demanded. Thereafter the Trial Examiner, over the objections of petitioners, required argument from petitioners upon petitioners' exceptions to such Tentative Order without first giving petitioners an opportunity to present evidence as requested relating to the conditions affecting petitioners existing subsequent to June 14, 1933.

(3) After said argument, the said Examiner arbitrarily refused to rule upon the exceptions so presented to such Tentative Order, and refused to permit petitioners to apply to the Secretary for relief from such arbitrary action, and, without making such rulings, required that petitioners proceed with the presentation of evidence.

(4) The Trial Examiner arbitrarily and erroneously refused to admit to the record material and relevant evidence favorable to petitioners, and admitted incompetent evidence offered by the complainant as set forth in Exhibit A (Statement Objecting to Rulings and Procedure of Examiner), attached hereto and
377 made a part hereof. The Examiner erroneously refused to admit, when offered by petitioners, competent evidence as to the effect upon finances and efficiency of the actual application of the rates prescribed in the order of June 14, 1933, by the respondents, Farmers Union Live Stock Commission Company and the Producers Commission Association, and such action, together with the denial of the offers of proof by petitioners after the reopening of the proceeding, was highly prejudicial to these petitioners (Exhibit A, p. 83).

(5) The said Examiner arbitrarily and capriciously took upon himself the role of prosecutor of the case by introducing over the objection of counsel Examiner's exhibits containing data and material theretofore in the possession of the attorney prosecuting the case for the government and relating to additional agencies not theretofore respondents in such proceedings, entering the business at the Kansas City Stockyards subsequent to June 14, 1933, and prior to November 1, 1937, although such Examiner knew, or should have known, from the records already in evidence of the Department of Agriculture that such agencies had been short-lived and had long prior to June 2, 1938, discontinued business at such stockyards.

(6) Petitioners thereafter proposed to such Examiner certain findings of material and controlling evidentiary facts based and predicated upon undisputed evidence appearing in the record of the testimony taken at the various hearings in connection with such administrative proceedings. The said Examiner arbitrarily refused to make such findings or, to prepare and present in his "Report and Recommendations" any analyses whatsoever of portions of the evidence to which such findings related essential to
a fair consideration of the validity and reasonableness of
378 the conclusions and determinations contained in said "Report and Recommendations."

(7) The "Report" of said Trial Examiner, referred to in the motion of respondents, did not present a fair analysis of the evidence presented, but consisted in the main of a re-copying of the invalid order of June 14, 1933. The said Report unfairly and prejudicially to petitioners intermingled with such findings as were made, conclusions of ultimate fact and opinions unsupported by evidence and does not contain a fair and dispassionate factual analysis of the evidence contained in the Record relating to de-

terminative conclusions upon which the validity of the order depended.

(8) After the filing of the aforesaid "Report and Recommendations" by said Trial Examiner, the petitioners herein did file with the Secretary their certain Exceptions thereto together with a statement objecting to the procedure and rulings of said Examiner, such Exceptions and such Statement being in accordance with the requirements of the Order Promulgating Rules of Practice to govern procedure under the Packers and Stockyards Act, 1921, as amended, and such Exceptions and said Statement, marked "Exhibit A" are hereby made a part of this Return and each and all of the matters of exception set forth therein as applicable to the order of the Secretary of June 20, 1939, are here and now re-asserted and re-alleged as a part of this Return as fully as if set out herein.

(9) The Secretary denied the reasonable request of petitioners that a period of time sufficient to give opportunity for a fair and reasonably complete presentation of the issues by oral argument before him be granted petitioners and only allowed, as stated in the order of June 20, 1939, two hours to petitioners for presen-
379 tation of oral arguments upon said Exceptions and the objections to the Examiner's ruling and procedure.

(10) Upon information and belief, the petitioners allege that following such oral argument, the Secretary received recommendations and suggestions from said Trial Examiner and other persons connected with the Solicitor's Office of the Department of Agriculture and the prosecution of said inquiry relating to the evidence in said proceeding and to his decision upon the matters before him in connection with such Exceptions and Objections to the Examiner's procedure, rulings and Report; that all such suggestions and recommendations were submitted to the Secretary out of the presence of the petitioners or their counsel and none were communicated to these petitioners or their counsel; that the said Secretary, failing and refusing to weigh dispassionately the evidence before him in said proceedings, received and accepted from such person or persons actively associated with those charged with the duty of prosecuting the inquiry recommendations as to the form, character and content of changes to be made in such proposed order to enable it to meet, if possible, the exceptions so filed and yet prescribe the identical rates and charges set forth in the invalidated order and the said Secretary did delegate to such person or persons the duty of rewriting or revising certain sections or parts of said proposed order in accordance with the aforesaid recommendations. The petitioners were at all times denied the right and opportunity to refute, explain or contradict upon the basis of the evidence contained in the record the contentions, asser-

tions, and statements of such person or persons so written into and constituting a part of such order of June 20, 1939.

(11) The order of June 20, 1939, improperly sets forth
380 (Paragraph 140–B) data taken from work papers of unidentified accountants who were not produced as witnesses (Government Exhibits 114–A) not heretofore referred to in any prior order, Report or argument in the proceedings. Proper and valid objections to such Exhibits were made by petitioners at the time they were offered in evidence and it was stated by petitioners that the use of same, without prior notice to petitioners and affording petitioners an opportunity to check such papers for accuracy with the books and records of petitioners, would deny to petitioners due process of law and a fair hearing (T. II, p. 928). Nevertheless such use, without notice, of such exhibits, unidentified by such accountants, has been made, a misleading and unwarranted inference drawn from such data, and petitioners have been denied, as a result thereof, a full and fair hearing.

(12) The refusal of the Secretary to rule specifically upon the aforesaid Exceptions and Objections is in conflict with the Rules of Practice so promulgated by the Secretary and constitutes a refusal to reveal to petitioners or to this Court the reasons, if any, which prompted the denial of such Exceptions.

6. Petitioners state that said order of June 20, 1939, is unreasonable, invalid, and inappropriate as a basis for the action of this Court in that the rates and charges therein prescribed are predicated upon the erroneous statement that the schedule of rates established "automatically produces an increasing per head revenue as the number of head in a consignment decreases"; that this statement is mathematically incorrect and inaccurate as to consignments which contain less than twenty head of cattle and calves and less than forty head of hogs, and which constitute most of the
381 consignments of livestock to petitioner agencies. The order (paragraph 116) states that inasmuch as each consignment, "however large or small, must be yarded, sold, weighed, and accounted for as a separate unit" that "the greater the number of consignments contained in each 100,000 head of animals handled by respondent firms the greater will be the personnel and resultant costs required for such handling." The evidence indisputably shows that the number of consignments in each 100,000 head of animals handled by petitioners almost doubled in the period from July 23, 1933, to November 1, 1937 (paragraph 27–A) as compared with the test year 1931 or prior years due to the increased use of trucks for transportation of livestock to market (Petitioners' Exhibits A–1, A–2, and A–3).

The rates prescribed by this order are identical with those prescribed by the order of June 14, 1933, and erroneously fail to

adequately cover the increased cost inevitably resultant from the great decrease in headage per consignment handled by petitioners, and each of them, during the period to which such order purports to make said rates applicable.

7. Petitioners further answering, affirmatively allege that the determinations contained in said order of June 20, 1939, purporting to set forth a schedule of rates and charges as reasonable, are arbitrary, erroneous, and do not constitute a statement of just, reasonable, and nondiscriminatory rates and charges as required by said Packers and Stockyards Act of 1921, in that:

(a) These determinations are predicated upon conclusions of fact set forth in said order made without evidence and contrary to all the evidence contained in the record or before the Secretary.

Reference is here again made to the Exceptions to the "Re-
382 port and Recommendations and objections to the Rulings and Procedure of the Examiner, made a part hereof and marked "Exhibit A," and to the allegations contained in Section V of the petitions filed in these causes, and the allegations therein contained are reasserted as a part of this Return as fully as if set out specifically herein.

(b) Relevant, material and pertinent facts appearing from the undisputed evidence set forth in the suggested findings of petitioners and constituting a part of the Exceptions to the "Report and Recommendations" of the Trial Examiner in direct conflict with basic conclusions expressed in said order were ignored, overlooked and given no weight in the making of such determinations. Petitioners refer specifically to findings proposed by petitioners, and which said order fails to present, predicated upon undisputed facts established by the testimony taken at the various hearings, material and pertinent to the determinations made, and in respect of which, as a result of the arbitrary action of the Trial Examiner and of the Secretary, no weight was given in arriving at such conclusions and determinations; such findings, so refused, among others, being as follows:

(1) A finding as to the number of market agencies in business at the Kansas City Stockyards from the year 1925 to the year 1937 (petitioners' proposed Finding No. 1) which finding would show a very substantial annual decrease subsequent to 1930 and in particular after the year 1933 in the number of such agencies and their personnel in business at said stockyards.

(2) A finding as to the average number of head of cattle and calves handled in the years 1931, 1933, 1936, and 1937 by all
market agencies operating upon stockyards posted by
383 the Secretary under the Packers and Stockyards Act, 1921, and showing that the volume per agency handled by petitioners was very substantially in excess of such average volume

of all agencies, was very greatly in excess of the average annual volume of agencies operating upon other stockyards so posted, of comparable size; and that the annual volume handled by a number of individual petitioner agencies was in excess of the total volume handled by all market agencies at many stockyards so posted by the Secretary during the years referred to.

(3) A finding as to the revenue yield upon the basis of a percentage of the gross proceeds of livestock handled, of market agency rates and charges from the establishment of the Kansas City Stockyards up to and including the year 1937, and the comparison of such commissions for the sale of livestock with those applicable to commissions charged for the sale of livestock at competing markets and for the sale of other commodities for the year 1929 (Respondents' Exhibit 56) and subsequent years. This would disclose that the rates and charges under inquiry were much lower than those with which comparison is made.

(4) A finding indicating the seasonality of and great variation in receipts of livestock at the Kansas City Stockyards as compared with the daily, weekly and monthly variations of livestock receipts at other public stockyards, showing an increased "load factor" and necessarily increased unit cost at Kansas City as compared with other markets, particularly Chicago (Respondents' Exhibit 55, Government Exhibits 16, and 116) (Respondents' proposed finding, paragraph 4).

(5) A finding as to the origin of the Schedule of Rates and Charges of respondents as in effect as of April 7, 1930,
384 indicating the character of the order entered by the Secretary of Agriculture on July 24, 1923 (Exhibit 24) establishing such rates and charges as reasonable; the reduction in said tariff as of May 23, 1932, by ten percent at the suggestion of the then Secretary of Agriculture; and the incorrect and inaccurate statement of the Departmental Accountants to the Secretary of Agriculture that this reduction amounted to only four percent of the revenues under the theretofore existing tariff which resulted in a reopening and continuance of the inquiry.

(6) A finding that the respondent agencies as shown by the testimony of all witnesses handled their businesses in a reasonably efficient and economic manner (Respondents' proposed findings, paragraph 8).

(7) A finding setting forth the substantial increase in the cost of living at Kansas City which occurred in the period intervening between June 1933, and November 1, 1937, such increases amounting to approximately ten percent of the living cost prevailing at the close of the former record in 1932.

(8) A finding showing the increases occuring in the period from 1932 to 1937 in the parity price of all meat animals, and

that the prices received in this period by petitioners' patrons were much higher than those received and paid either in the year 1923 when the first investigation of petitioners' business was undertaken by the Secretary of Agriculture and higher than the prices received and paid in 1932 when the former record was closed.

(9) A finding showing that the total revenues of petitioning agencies in 1937 under existing rates (found unreasonable) amounted to only 74.8 percent of these revenues in the year 1931.

385 (10) A finding that during the period from 1923 to 1937 a much higher percentage of available livestock was handled by competing public markets operating within the area normally tributary to Kansas City under the rates of commission charged for selling services very substantially in excess of those charged and collected by petitioners; the charges at such markets varied from three percent to five percent of such proceeds; that agencies operating on such markets increased their business by having funds available permitting the maintenance of close contacts with the livestock producers, whereas the business of petitioners at Kansas City substantially declined in volume. (R. R. 558, 559, 603, 664, 665, Exceptions page 18, paragraph 10.)

(11) A finding based on the uncontradicted evidence at the reopened hearing showing that the effect of the lowered rates, lessened volume of business, and the deposit of funds with this Court representing the difference between rates collected and rates ordered on June 14, 1933, was a reduction in the number of market agencies at the Kansas City Stockyards from sixty-one on June 30, 1931, to fifty-nine as of June 30, 1933, and to forty-one as of June 30, 1937; that the effect of the requirement of this Court for deposit with the clerk of the Court of the funds referred to during the period from July 22, 1933, to November 1, 1937, had been to impair the necessary capital of all petitioners remaining in business; that these agencies had generally used up all available means of credit and in many instances had borrowed money for their current operations by assignment of their interest in such deposited funds; that in many instances the petitioners had assigned to their employees interests in such
386 funds as a consideration for the continuance of the necessary service of such employees at lowered and noncompensatory salaries; and that in many instances the remaining agencies still in business will be insolvent and unable to further continue business unless the funds so held in the Registry of this Court are restored to them.

(12) A finding that the reduced amounts available to petitioners for the handling of their business during the period from

1933 to 1937 had not permitted these agencies to operate efficiently; that drastic reductions in expenditures made necessary thereby had lessened the volume of business handled by them as compared with other competing agencies marketing livestock; that forced reduction during the period in the number of yardmen employed by certain of the agencies and in the compensations paid such yardmen as well as the increased percentage of smaller consignments had caused the work of feeding and watering as well as weighing livestock not to be done as expeditiously and as promptly as it should be done with a resultant loss in net returns to owners of such livestock; that the wages paid to employees of petitioners were reduced to amounts unreasonably low; that a reduction in the annual amount spent by all agencies in the year 1923 of approximately $240,000 for advertising to the total sum of $52,000 in the year 1937, and of telephone and telegraph expenses from $80,000 to $33,000 in the respective years, had reduced the relative volume of business handled by agencies at the Kansas City Stockyards as compared with other markets and caused the marketing of livestock to be handled by agencies at other markets in the territory who, by charging higher rates of commission had revenues available sufficient to provide for the reasonable expenditures necessary to maintain con-
387 tacts with and information concerning livestock shippers and the livestock in the territory served by such public markets; that the market agencies, Producers Commission Association and the Farmers Union Live Stock Commission Company, who accepted in part and applied the rates prescribed in the order of June 14, 1933, had impaired their financial structures and their efficiency and had withdrawn bonds and securities deposited with the Market Practice Committee at the Kansas City Stockyards to guarantee compliance with trading rules, thereby forfeiting membership in the Clearing House maintained for the purpose of expediting the clearance of credit transactions of purchase and sale between the market agencies at the Kansas City Stockyards.

(13) A finding based upon the audit and cost studies of the government accountants for 1931 (Government Exhibit 115) setting forth the total operating costs by species and mode of handling and the analyses of such costs as to each market agency prepared and offered by the Chief Accountant for the government, who, as a witness for the government testified (Abst. 450, T. 2607) "These costs are correctly stated from the books and reports of these companies, and it is my opinion they are correctly stated from the standpoint of rate-making"; and showing that such costs as found by the government were substantially in excess of those stated in said order.

9. In further answer to the said motion and for return to the Order to Show Cause, petitioners allege that there is no substantial evidence to support the conclusions in paragraphs No. 129, 130, and 131 of said order to the effect that there are too many commission concerns having too large a personnel en-
388 gaged in business at the Kansas City Stockyards and that a smaller number of firms than are engaged could handle the business more economically, and such conclusions are in conflict with all competent and relevant evidence. Petitioners further allege that since under the statute as of the date of said order the Secretary concededly was without power to limit the number of market agencies who shall engage in the commission business at the Kansas City Stockyards, he may not lawfully employ as the basis for the determination of reasonable costs or the establishment of reasonable rates, the conclusion that too many such agencies are in business at said stockyards.

Further answering petitioners allege that there is no substantial evidence to support the conclusion contained in paragraph No. 131 of said order to the effect that certain expenses incurred by the commission firms, including salesmanship and advertising costs, are expenses which the conditions of the business tend to increase and that expenses actually incurred by any agency or all agencies do not furnish an adequate guide to the reasonableness of such costs.

Further answering, the petitioners allege that there is no substantial evidence to support the conclusion of fact set forth in Paragraph 113 of said order that "few firms made any substantial reductions in salaries and wages sufficiently early in the year 1931 materially to affect their costs of doing business as shown in the audits covering that year," and such conclusion is in direct conflict with said audits and the cost studies of the government accountants and with the factual findings contained in Paragraph 139 of said order.

10. The order of June 20, 1939, is invalid and fails to furnish a proper basis by the determinations made therein for
389 the distribution or other disposition of the moneys of petitioners now impounded in the Registry of this Court in that the schedule of rates and charges therein prescribed as reasonable is not prescribed in accordance with the so-called "Guide to Reasonableness," either as such Guide was stated in the invalidated order of June 14, 1933, and in the Report and Recommendations of the Examiner in the reopened proceedings or as such Guide is set forth in revised form in the order of June 20, 1939. In the former order (paragraph 114) it was said:

"The Guide adopted in this case is that under ordinary conditions as they prevail on the Kansas City market, a schedule of rates should be high enough to produce sufficient gross revenue to pay all reasonable costs and a reasonable compensation for the management and risk, that is, a reasonable profit, to the owner or owners of any firm which receives enough livestock to enable it to handle its business in a reasonably efficient and economic manner."

In the Exceptions filed to the Report and Recommendations of the Examiner in the reopened proceedings findings of evidentiary fact were requested, based upon the audits of the Government Accountants which conclusively established that if such Guide were followed the existing rates could not be held to be unreasonable and the rates prescribed and suggested by the Examiner were too low to produce the amount of revenue required under the Guide by the owner or owners of any firm or market agency to be affected by the order.

In the order now presented to the Court by this motion dated June 20, 1939, although neither counsel for the government nor counsel for the respondents in the administrative proceedings criticized or suggested any change in the Guide to
390 Reasonableness as stated in the Report of the Examiner and as contained in the former order another guide is adopted. This is stated in the order as follows (paragraph 114):

"In arriving at such a schedule of commission rates it is necessary to adopt a guide to reasonableness. The guide adopted in this case is that followed in the Omaha Commission Rate Case and approved by the Supreme Court of the United States in the case of Tagg Bros. & Morehead et al. v. United States (280 U. S. 420); namely that 'Commission rates yielding a reasonable profit above the normal cost of rendering the service are reasonable.'"

This revised guide was not followed in arriving at the conclusions of fact and determinations made in the succeeding sections of the order in that the "normal" or usual costs of rendering the service as found by the accountants and auditors of the government to exist were as to the substantial items of cost, such as the cost of salesmanship and cost of business-getting and maintenance not set forth in or recognized by said order in determining the reasonable cost. On the contrary thereof such costs were ignored and the costs prescribed by the order as reasonable in total as to cattle and calves, the principal species handled, amounting to 40.93 cents per head were less than the actually sustaining costs of any one of the fifty-seven firms in business whose average experienced cost as shown by government's own

audit amounted to 56.71 cents per head. The average cost per head for handling cattle and calves as found by such government accountants in respect of the three agencies, each of which handled a very large volume of cattle and calves and all of whose costs were out-of-pocket costs incurred as a result of "arm's
391 length bargaining" was 53.71 cents per head, or approximately 13 cents more per head than the so-called "normal" costs employed in this order as the basis for the determinations to be made therein in respect of just and reasonable rates. It furthermore appears that accepting the so-called reasonable costs prescribed in this order in respect of cattle and calves and adding thereto the so-called reasonable costs of management (or "profit") prescribed by the order and such other costs as upon the face of the order are shown to have been sustained but to have been omitted from consideration in determining the so-called just and reasonable rates, that the yield from such rates correctly calculated not only fails to allow for a reasonable profit but fails to provide for any return whatsoever above such reasonable costs. In fact, upon the evidence such rates produce very substantial deficits during the periods referred to in such order, and are, therefore, upon the face of the record unreasonable and unlawful. The so-called "guide to reasonableness," as so stated in said order was not, as applied, in the absence of a proper definition of the term "normal" as used therein a legally authorized guide, but constituted a mere pretext, injected into the order for the purpose of permitting the exercise of unrestrained and arbitrary power.

11. In further answer to the said motion, petitioners allege that the Secretary acquired no jurisdiction to fix any reasonable rates or to make the determination contained in finding of fact No. 181 because the order made no finding that during the period from July 23, 1933, to November 1, 1937, the respondent market agencies charged unjust and unreasonable rates, the finding in para-
392 graph No. 179 "that respondents' schedules of rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory," being entirely insufficient for such purpose.

12. The order of June 20, 1939, attached to and made a part of the motion of respondents herein is invalid and inappropriate as a guide or basis for the distribution or other disposition of moneys deposited by these petitioners in the Registry of this Court and the determinations therein contained are in and of themselves unreasonable in that upon the face of such order and the administrative record in this proceeding the revenues producible under the rates and charges as of the test year 1931 and in the period to which

the rates are to be made applicable fail to cover the costs found reasonable by such order, when to the reasonable costs as found by such order there is added the further cost of the hearings and litigation in respect to the former invalid order, taxes payable during the period in question under the Social Security Act as referred to in paragraph 163a of such order, the cost of public liability insurance as shown by the accountants for the government which was not included within such reasonable costs, and those general and administrative costs, such as Exchange dues and assessments, traveling expenses and automobile expense, which were improperly included under the general heading of business-getting and maintaining expense and no allowance therefor provided.

Respondents further assert that the revenue yield of said proposed reasonable rates and charges in respect of cattle and calves as applicable to the year 1931, which said order purports to take from calculations made by these petitioners' accountants as
393 amounting to .4779 cents per head constitutes a manifestly incorrect use and application of the calculation of such accountants inasmuch as such revenue yield is applicable to both selling and buying cattle under such suggested rates, whereas no cattle and calves were bought upon such rates during the period in question but on the contrary thereof under the former buying rates which were lower. As to cattle and calves such estimated yield was much higher than the actual yield by reason of the further fact that during the period from July 23, 1933, to November 1, 1937, a greater proportion of calves in respect of the total of cattle and calves sold appeared in the receipts as shown in the evidence than was existent in the year 1931. The rates as applicable to calves is much lower than the rate as applicable to cattle and this had the inevitable effect of reducing the average revenue yield per head of the total of cattle and calves handled during said period. Calculated upon the basis of the actual consist of the volume for the year 1931, the application of the so-called reasonable rates and charges determined by the order to cattle and calves results in an average per head revenue of .4657 cents per head instead of .4779 cents per head as stated in said order, which said amount, exclusive of any allowance for Social Security Taxes, expenses of hearings and litigation, public liability insurance, and administrative and general expense erroneously included in business-getting and maintaining expense, leaves a yield in excess of the reasonable cost set up in said order plus the expenses of management as to cattle and calves amounting to $6,624.20 per annum or a per cent of margin or spead of .6 of one percent. The total of Social Security Taxes as calculated in said order amounts as applicable to cattle and calves to $3,357.78, the total of rate case expense, figured

394 upon the basis of an amortization during the period of the proposed effectiveness of such rates, amounts to $21,882.70; public liability insurance, omitted, amounts per annum to $7,263.78; and the administrative and general expenses, not included in the "reasonable costs," amount to $13,581.03, or a total of annual fixed charges to be absorbed by such spread before "reasonable profit" accrues to petitioners amounting to $46,095.29 per annum in respect of cattle and calves, thus producing an annual deficit below reasonable costs (exclusive of "reasonable profit") as of the consist of the volume in 1931 amounting to $39,471.09. This deficit is applicable to 77.9 percent of the total income received by petitioners from all species and results in an over-all deficit as to all species as to each petitioner, increasing in amount during each year to which such order is purportedly made applicable. The order arbitrarily and unfairly fails to refer to the uncontradicted evidence showing that actual application of the suggested "reasonable" rates and charges to the business of certain representative petitioners during a six months period subsequent to July 23, 1933, and prior to November 1, 1937, disclosed that such rates produced an average revenue in respect of cattle and calves of only 45.4 cents per head and not 47.79 cents per head as in said order stated.

13. Further answering said motion and by way of return to the order to show cause herein, the petitioners state that said order of June 20, 1939 (paragraph 163–a), erroneously assumes that in no event should there be covered into the rates and charges collected by respondents as representative of expenses incurred in connection with the proceedings before the Secretary or the proceedings in these causes incident to the review and inval-
395 idation of the Secretary's order of June 14, 1933, an amount in excess of that portion of such expenses as were incurred on account of the administrative hearings amortized over a period of ten years. Petitioners assert that such assumption is erroneous in law and without support in equity and good conscience, and that the manifest effect thereof would be to deprive these petitioners of their property and livelihood without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

14. Further answering said motion and by way of return to the order to show cause herein, petitioners assert that the order of the Secretary of Agriculture of June 20, 1939, is invalid by reason of the erroneous denial and overruling by the said Secretary of the affidavit of bias and prejudice directed to said Secretary filed by petitioners on August 12, 1938, and by reason of the denial and overruling of each and every of the several motions filed with such Secretary of Agriculture by petitioners, including the

motion to suppress the report and recommendations of the Trial Examiner filed by said petitioners on February 17, 1939.

15. In further answer to the said motion and by way of return to the order to show cause, petitioners allege that the provisions of said order of June 20, 1939, directing them to "cease and desist from charging, collecting, demanding, or retaining for any stockyard service rendered by them during the period from July 23, 1933, to November 1, 1937, any rate, charge or revenue in excess of the rates and charges herein found to be reasonable" is not authorized by the Packers and Stockyards Act, 1921, and was not within the power of the Secretary of Agriculture to make.

16. By way of further answer to said motion and return
396 to the order to show cause herein, petitioners allege that the Packers and Stockyards Act, 1921, as amended, if it authorizes or empowers the Secretary to formulate and fix rates and charges for stockyard services of marketing agencies upon the adventitious, hypothetical and wholly speculative basis adopted by the order of June 20, 1939 (which petitioners deny), is unconstitutional by reason of the absence of standards or criteria recognizable by law to guide or control the Secretary in the determination as to what rates and charges are unreasonable and as to what are just and reasonable. The application of the provisions of the law to facts in evidence, evidenced by such order, if permissible under the terms of such statute, vests solely in the Secretary as a tribunal not impartial by the very nature of his official position and, in this instance, not impartial as to these petitioners as indicated by his public statements, set forth in the record, dictatorial and absolute power to determine any rates and charges to be unreasonable and to fix and determine as just and reasonable any rates which he may see fit and thereby enables him by administrative fiat and the exercise of an uncontrolled discretion to destroy businesses of market agencies which have been built up and established over a long period of years, and therefore said Act, if so construed, and said Order purportedly issued pursuant thereto deprive these petitioners and each of them, as alleged in the original petitions filed herein, of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

In conclusion, petitioners deny the allegations contained in paragraph "7" of defendants' Motion for Order to Show Cause and allege that the Secretary, defendant herein, has failed to
397 proceed in connection with the proceeding re-opened by his order of June 1, 1938, as and in the manner such defendant stated he would proceed in the motion of defendants filed herein on June 7, 1938, in that the procedure adopted has

not been in accord with the "Order Promulgating Rules of Practice to Govern Proceedings under the Packers and Stockyards Act, 1921, as amended," (Sept. 14, 1936, 1 Fed. Reg. 1362); has not accorded to petitioners rights to which petitioners are entitled under said Act and the rulings of the Supreme Court of the United States; has failed to give and grant to petitioners the full and fair hearing referred to in said motion, and has failed with due expedition to "determine by an order as of June 14, 1933, what rates may be reasonably charged by petitioners to their clients for services rendered them."

Wherefore, in accordance with equity and law and for each and all of the reasons herein set forth, the prayer of defendants that the moneys deposited in the Registry of this Court by petitioners be distributed to persons other than these petitioners and their assigns should be denied and an order entered herein directing restitution to the petitioners of said money in accordance with petitioners' motion for restitution filed herein on the 11th day of June, 1938, and for such other orders as to the Court may seem meet and proper in the premises.

Respectfully submitted.

FREDERICK H. WOOD,
JOHN B. GAGE,
*Attorneys for Petitioners.*

Received copy this 9th day of September 1939.

THOMAS A. COSTOLOW,
*Asst. U. S. Attorney.*

[File endorsement omitted.]

398 In United States District Court

*Separate return of New Amsterdam Casualty Company of Baltimore, Maryland (substituted for Harry J. Kennaley d/b/a Harry Kennaley Commission Company) to order to show cause*

Filed Sept. 16, 1939

Comes now New Amsterdam Casualty Company, a corporation, assignee of and substituted as a party for Harry J. Kennaley, doing business as Harry Kennaley Commission Company, and, for answer to the motion of respondents for order to show cause, and for return to such order entered herein on July 3, 1939, said petitioner alleges and states that it joins in, adopts and makes a part hereof by reference, the entire body of the joint and several return to the order of July 3, 1939, filed herein by

Messrs. Frederick H. Wood and John B. Gage in behalf of petitioners in the related cases in this proceeding, #2329–78, being paragraphs 1 to 16, inclusive, of said return, and including also the exhibit thereto attached.

Wherefore, in accordance with equity and law and for each and all of the reasons herein set forth by reference as aforesaid, the prayer of respondents that the moneys deposited in the registry of this Court by petitioner be distributed to persons other than this petitioner, should be denied and an order entered herein directing restitution to petitioner of said money in accordance with petitioner's motion for restitution filed herein, and for such other orders as to the Court may seem meet and proper in the premises.

E. R. Morrison,
Homer H. Berger,
Douglas Stripp,

*Solicitors for New Amsterdam Casualty Company of Baltimore, Maryland (substituted for Harry J. Kennaley d/b/a Harry Kennaley Commission Company.)*

[File endorsement omitted.]

399 In United States District Court

*Motion to strike portions of joint and several return of petitioners to order to show cause*

Filed Oct. 19, 1939

Come now the respondents in the above-entitled cause and move the Court to strike the following portions of the joint and several return of petitioners to order to show cause:

"1. All of the last sentence of section 4 on page 3 which reads as follows:

"'Petitioners allege that each and all of the determinations in said purported order of June 20, 1939, were and are arbitrary, capricious and made by persons other than the Secretary of Agriculture as a result of pre-judgment of the issues involved without dispassionate or fair consideration or appraisal of the evidence relating to such determinations.'

"2. Each and every allegation contained in sub-paragraph 10 of section 5."

for the reason that the allegations contained in said portions of the aforesaid joint and several return are impertinent, scandalous, incompetent, irrelevant, and immaterial to any issue which may properly be raised in this suit.

400 Wherefore respondents pray that the said portions of said joint and several return be stricken therefrom and that an order be entered accordingly.

MAURICE M. MILLIGAN,
*United States Attorney.*
By T. A. C.
WENDELL BERGE,
J. C. WILSON,
*Special Assistants to the Attorney General.*

To: JOHN B. GAGE,
*Bryant Building, Kansas City, Missouri.*

Please take notice that the undersigned will bring the above motions on for hearing before this Court at the Federal Building, Kansas City, Missouri, on the 25th day of October 1939, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

WENDELL BERGE,
J. C. WILSON,
*Special Assistants to the Attorney General.*

[File endorsement omitted.]

400-A In United States District Court

[Title omitted.]

*Notice to take depositions upon oral examination*

To WENDELL BERGE, JAMES C. WILSON, and MAURICE H. MILLIGAN,
*Attorneys for Respondents:*

Please take notice that at _____ A. M. Eastern Standard Time, on _____, the _____ day of November, 1939, at the Department of Agriculture, in Washington, D. C., petitioners in the above entitled action will take the deposition of Henry C. Wallace, whose address is Department of Agriculture, Washington, D. C., upon oral argument, pursuant to the Federal Rules of Civil Procedure, before a Notary Public or before some other officer authorized by law to take depositions. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

JOHN B. GAGE,
FREDERICK H. WOOD,
*Attorneys for Petitioners.*

Kansas City, Missouri, October 12, 1939.

401 In United States District Court

*Respondents' motions for an order that the deposition of Henry A. Wallace shall not be taken or in the alternative for an order requiring the deposition to be taken by written interrogatories*

Filed Oct. 19, 1939

Whereas attorneys for the petitioners in the above entitled cause have served upon attorneys for the respondents a notice stating that petitioners will take the deposition of respondent Henry A. Wallace by oral examination commencing at 10:00 A. M. on the thirteenth day of November 1939 at the Department of Agriculture, Washington, D. C., and continuing from day to day thereafter until such examination is completed;

Come now the respondents in the above entitled cause by their attorneys and make the following motions:

FIRST MOTION

Respondents move the Court to enter an order that the deposition of respondent Henry A. Wallace shall not be taken for the following reasons:

(1) The pleadings heretofore filed in this cause do not properly raise any issues concerning which petitioners are entitled to examine respondent Henry A. Wallace;

402 (2) The taking of said deposition would subject respondent Henry A. Wallace to unnecessary annoyance and oppression.

(3) The taking of said deposition would unduly and unnecessarily burden, obstruct, and interfere with respondent Henry A. Wallace in the performance of his official duties as Secretary of Agriculture.

SECOND MOTION

If respondents' first motion is not granted, respondents in the alternative move the Court to enter an order requiring the deposition of respondent Henry A. Wallace to be taken upon written interrogatories submitted to and approved by the Court after having afforded respondents an opportunity to be heard on objections to said interrogatories, for the following reasons:

(1) Examination by written interrogatories approved by the Court will burden, obstruct, and interfere with respondent Henry A. Wallace in the performance of his official duties as Secretary of Agriculture much less than would an oral examination;

(2) Examination by written interrogatories submitted to and approved by the Court will protect respondent Henry A. Wallace from the annoyance and oppression of being compelled to answer incompetent, irrelevant, and immaterial questions.

MAURICE M. MILLIGAN,
*United States Attorney.*

By T. A. C.
WENDELL BERGE,
J. C. WILSON,
*Special Assistants to the Attorney General.*

403 To JOHN B. GAGE,
*Bryant Building, Kansas City, Missouri.*

Please take notice that the undersigned will bring the above motions on for hearing before this Court at the Federal Building, Kansas City, Missouri, on the 25th day of October 1939, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

WENDELL BERGE,
J. C. WILSON,
*Special Assistants to the Attorney General.*

[File endorsement omitted.]

404 In United States District Court

*Motion to strike portions of joint and several return to order to show cause, and motion for order that depositions of Henry A. Wallace shall not be taken submitted and overruled, Oct. 25, 1939*

This day this cause came on to be further heard, the parties appearing by their respective attorneys; thereupon the Motion filed herein to strike portions of joint and several return of petitioners to order to show cause is argued, submitted, and overruled by the Court. Respondents' Motion for an order that the deposition of Henry A. Wallace shall not be taken, etc., is argued, submitted, and denied by the Court. Leave is granted to amend return by interlineation.

405 In United States District Court

*Respondents' answer to the joint and several return of petitioners to order to show cause*

Filed Nov. 14, 1939

Come now the respondents in the above-entitled causes and answer the Joint and Several Return of Petitioners to Order to Show Cause as follows:

1. Respondents deny each and every allegation contained in paragraphs 1 to 4, inclusive, of the said return.

2. Answering paragraph 5 and the several numbered subsections thereof, respondents deny each and every allegation contained therein except as hereinafter otherwise expressly admitted.

(a) Answering subsection 2 of paragraph 5 of the return, the respondents admit that the examiner required argument upon the petitioners' exceptions to the tentative findings of fact
406 and order before taking additional testimony, but deny every other allegation of said subsection.

(b) Answering subsection 8 of paragraph 5 of the return, the respondents admit the allegations contained therein except that the respondents do not admit any of the allegations contained in Exhibit A which the petitioners reassert and reallege in said subsection 8; and the respondents deny that any of the matters and things alleged in Exhibit A are now material and relevant or that respondents are under any obligation to answer any of the allegations contained in said Exhibit A; and the respondents further say that all of the matters and things set forth in said Exhibit A have been fully considered by the Secretary and by him disposed of according to the facts and the law.

(c) Answering subsection 9 of paragraph 5 of the return, the respondents admit that the Secretary afforded the petitioners two hours in which to present oral argument upon their exceptions and objections to the examiner's rulings and report, but deny every other allegation of said subsection.

3. Answering paragraph 6 of the return, the respondents deny each and every allegation contained therein except that the respondents admit that the order of June 20, 1939, contains the excerpts quoted therefrom and the respondents admit that the rates prescribed by the Secretary in his order of June 20, 1939, are identical with those prescribed by the order of June 14, 1933.

4. Answering paragraph 7 and the several subparagraphs
407 thereof, respondents deny each and every allegation contained therein except as hereinafter otherwise expressly admitted.

(a) Answering subparagraph (a) of paragraph 7, respondents say that none of the statements contained therein are allegations of fact requiring answer, except that insofar as any of the allegations of Section V of the original petitions filed in these causes, which petitioners incorporate by reference and reallege here, are relevant to any issue now before the Court, respondents reassert the answers contained in their answer to the said original petitions, hereinbefore filed.

(b) Answering subparagraph (b) of paragraph 7 and the subsections thereunder numbered from (1) to (13), inclusive, respondents deny each and every allegation contained therein except that the respondents admit that the petitioners proposed the findings summarized in the said subsections (1) to (13), inclusive,

5. Answering paragraph 9 of the return, the respondents deny each and every allegation contained therein.

6. Answering paragraph 10 of the return, the respondents deny each and every allegation contained therein except that respondents admit that the excerpts noted in said paragraph from the Secretary's orders of June 14, 1938, and June 20, 1939, are contained in the said orders.

7. Respondents deny each and every allegation contained in paragraphs 11 to 16, inclusive, of the said return.

408 Wherefore, having fully answered, the respondents pray:

1. That the Court enter an order directing and commanding that the moneys impounded in the registry of this Court in these causes be immediately restored and repaid to those persons from whom petitioners have collected the said moneys, or to their duly designated representatives or assigns.

2. That the respondents have such further relief as may be proper in the premises.

WENDELL BERGE,
HUGH B. COX,
J. C. WILSON,
*Attorneys for the Respondents.*

Received copy of the above Answer this 14th day of November 1939.

JOHN B. GAGE,
FREDERICK H. WOOD,
*Attorneys for the Plaintiffs.*

[File endorsement omitted.]

409 In United States District Court

*Respondents answer to the separate return of New Amsterdam Casualty Company to the order to show cause*

Filed Nov. 14, 1939

Come now the respondents in the above entitled cause and for their answer to the separate return of New Amsterdam Casualty Company to the order to show cause issued by this Court on July 3, 1939, adopt, assert and incorporate by reference their answer to the Joint and Several Return of Petitioners to Order to Show Cause filed by Messrs. Frederick H. Wood and John B. Gage in behalf of the petitioners in related cases.

Wherefore having fully answered the respondents pray:

1. That the Court enter an order directing and commanding that the moneys impounded in the registry of this Court in this cause be immediately restored and repaid to those persons from whom the said moneys have been collected, or to their duly designated representatives or assigns.

2. That the respondents have such further relief as may be proper in the premises.

WENDELL BERGE,
HUGH B. COX,
J. C. WILSON,
*Attorneys for the Respondents.*

Received copy this 14th day of November, 1939.

JOHN B. GAGE,
FREDERICK H. WOOD,
*Attorneys for Plaintiff.*

[File endorsement omitted.]

410 In United States District Court

*Motion of petitioners for order directing the respondents to produce and file record and that petitioners be granted right of inspection of such record*

Filed Dec. 29, 1939

Now come petitioners and respectfully pray this Honorable Court for an order directing the Secretary of Agriculture, re-

spondent and movant herein (hereinafter called the "Secretary"), to file with this Court on or before the fifth day of January 1940, under his proper certificate, the following documents pertinent and material to the issues before this Court and in the possession of such Secretary, to-wit:

1. A transcript of the evidence and arguments of counsel, together with any and all exhibits, pleadings, motions, recommendations, proposed findings, instructions to the trial examiner, memoranda submitted to the Secretary of Agriculture by subordinates of the Secretary in the Department of Agriculture, or other writing presented to, received or considered by the Secretary in and applying to the proceedings before him referred to in the Motion of Respondents to Show Cause filed herein, together with all orders, opinions, or other documents issued by the Secretary in connection with such proceedings prior to the Order of the Secretary dated June 20, 1939, a copy of which is attached to said motion.

2. All papers, documents, depositions, and other writings constituting a part or portion of the record in this case on the last appeal thereof to the Supreme Court of the United States not included within the above designated papers, documents, or transcript referred to in Paragraph 1 preceding, which were, pursuant to an Order of this Court heretofore made and entered, delivered over to the Secretary by the Clerk of the Supreme Court of the United States.

And your petitioners further respectfully pray the Court that in the event the Secretary, respondent herein, is by the Court directed to file with the Clerk of this Court the aforesaid papers, documents, and transcript and such order is by the respondent complied with, that these petitioners be given and granted the right to inspect all such papers and documents while the same remain in the custody of the Clerk of this Court and prior to the hearing of the issues herein by this Court.

In support of such motion the petitioners respectfully state to the Court that it is necessary that petitioners or their
411 counsel prior to the hearing of the issues herein by the Court, be advised of the contents of all reports, findings, communications or analyses of evidence and proposed findings of fact submitted to or considered by the Secretary and not here-

tofore made known to petitioners in order that they may adequately prepare their defense herein.

Respectfully submitted.

FREDERICK H. WOOD,
JOHN B. GAGE,
*Attorneys for Petitioners.*

HOMER, H. BERGER,
DOUGLAS STRIPP,
*Attys., for New Amsterdam Cas. Co. substituted herein for Harry Kennaley, one of Petitioners herein.*

Received copy Dec. 29, 1939.

THOMAS H. COSTOLOW,
*Asst. U. S. Atty.*

[File endorsement omitted.]

In United States District Court

*Motion to require respondents to produce and file record, etc., submitted and overruled, Jan. 3, 1940*

The parties herein appear by counsel, and plaintiffs are granted leave to amend Motion of Petitioners for Order directing Respondents to produce and file record, etc.; Motion is argued, submitted, and overruled. Plaintiffs except. Statement of the Court is filed herein.

412 In United States District Court

*Respondents' objections to petitioners' proposed findings and conclusions and respondents' requests for additional findings and conclusions*

Filed May 23, 1940

Come now the United States of America and the Secretary of Agriculture, respondents herein, and make the following objections to petitioners' requested additional findings of fact and conclusions of law, and propose the adoption by the Court, in substitution thereof or in addition thereto, of the following findings of fact and conclusions of law:

ADDITIONAL FINDINGS OF FACT

1. Respondents have no objection to the first and second sentences of petitioners' proposed additional finding of fact number 19.

Respondents object to the content of the third and fourth sentences of said paragraph on the ground that they are not sup-

ported or justified by the record. The said sentences appear, however, to conform substantially to the opinions of the Court.

With respect to the fifth sentence of paragraph 19, respondents say that they have no objection to a finding that petitioners introduced a great deal of evidence at the reopened proceeding over the Government's objection, or to a finding that such evidence showed that substantial, and, in some respects, radical changes had taken place in petitioners' business and methods of operation since the close of the original record. Respondents do object, however, to a finding that the Secretary of Agriculture disregarded said evidence in the order of June 20, 1939. There is no support for such a finding either in the record or in the opinions of the majority of the Court. Indeed, the order of June 20, 1939, shows on its face that the Secretary did not disregard the evidence to which petitioners refer (see, e. g., Order, paragraphs 20-a, 27-a, 110, 111).

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Respondents have no objection to the concluding sentence (and the lettered subsections) of paragraph 19.

2. Respondents have no objection to the adoption by the Court of the findings of fact proposed in paragraph 20 of petitioners' request for additional findings.

Respondents request the Court to add to the said paragraph as proposed a finding of fact worded substantially as follows:

"Petitioners were given an opportunity to file and did file written objections and exceptions to the said report."

It is necessary that such a finding precede paragraph 21 (which has been agreed upon by the parties) since that paragraph states that the Secretary heard oral argument on the "aforesaid written exceptions."

3. Respondents object to paragraph 22 of petitioners' proposed additional findings on the ground that neither the record nor the opinions of the majority of the Court support the statements made therein or the obviously intended implication thereof.

414

Without waiving their objection to the adoption by the Court of such a finding, respondents submit that the undisputed facts of record and the facts as found and stated by the majority of the Court in their opinion, with respect to the quantity and quality of the Secretary's consideration of the record, would support a finding worded substantially as follows:

"22. As appears from his testimony in open court, the Secretary of Agriculture, in the course of his deliberations upon the case after its submission on oral argument, did not read any considerable portion of the narrative transcript and consulted only a few of the exhibits offered in evidence. He did, however, read in their entirety the examiner's proposed findings, conclusions,

and order, petitioners' printed exceptions thereto, and the memorandum prepared for him by the examiner summarizing said exceptions, and he had two conferences with the examiner at which he and the examiner went over item by item petitioners' exceptions and objections to the proposed findings, conclusion, and order. The testimony of the Secretary shows, therefore, that throughout this reopened proceeding the Secretary, in weighing the evidence, relied upon the examiner's appraisal of the testimony and exhibits."

4. Respondents object to paragraph 28 of petitioners' proposed additional findings on the ground that it is not supported by the record or justified by the opinions of the majority of the Court. There is no basis in the record or in the opinions for a finding that the Trial Examiner was not an impartial trier of the facts. There is also no basis in the record for a finding that "other subordinates of the Secretary of Agriculture [who] participated in the determination of the case." The record neither shows nor suggests that in his deliberations upon the case the Secretary consulted any of his subordinates except the examiner.

415

5. Respondents object to paragraph 30 of petitioners' proposed additional findings on the ground that it is not supported by the record or justified by the opinions of the majority of the Court. Argument on the merits of the matters stated in the paragraph is neither necessary nor proper since from the face of the opinions herein it is manifest that the Court did not decide whether or not the rates prescribed in the order of June 20, 1939, would have produced a margin of $100,923.57 over reasonable costs and profits, or whether or not by reason of the factors which petitioners mention there would have been no margin but instead a deficit. It is clear, indeed, that the Court could not consistently have expressed an opinion, and cannot now consistently make a finding, on the merits of these questions since to do so the Court would necessarily have to base its determinations upon the very evidence which the Court has said the Secretary fatally erred in not taking in the reopened proceeding. Manifestly the Court cannot now make the findings which petitioners propose and at the same time hold that the record is fatally deficient in evidence to support those findings.

6. Respondents object to paragraph 33 of petitioners' proposed additional findings on the ground that it is not supported by the record or justified by the opinions of the majority of the Court. Here again petitioners seek to have it appear that the Court went into the merits of the arguments as to the extent of the increases, if any, in petitioners' operating expenses during the impounding period, and into the merits of the question whether or not the

rate schedule prescribed in the order of June 20, 1939, was sufficiently flexible to cover such increases in expense as might
416 have occurred. It is clear from the face of the opinions herein that the Court did not undertake to pass upon the merits of those questions but instead invalidated the order of June 20, 1939, on the ground that the Secretary failed to take the very evidence necessary to a determination of those questions.

Moreover, neither this paragraph nor the one discussed above would be adequate as findings of fact on the points involved. Both paragraphs state only ultimate conclusions of fact, unsupported within the paragraphs or elsewhere in the findings by evidentiary findings. Whether or not the rates prescribed by the order would earn reasonable costs and profits is obviously one of the crucial factual questions in this case, the ultimate determination of which would involve the making of elaborate evidentiary findings on the entire record. Respondents respectfully submit that this Court's duty to make proper findings of fact could not be discharged by the adoption of the findings which petitioners propose, unless those findings are preceded by extensive supporting findings based upon an examination of the entire record.

ADDITIONAL CONCLUSIONS OF LAW

1. Respondents object to paragraph 5 of petitioners' proposed additional conclusions of law on the ground that it is not supported by the record or by the opinions of the majority of the Court and that it does not correctly reflect the findings and conclusions of the Court as expressed in said opinions. As worded, petitioners' proposed paragraph 5 would make it appear that this Court has considered the evidence of record bearing on the merits of the substantive questions involved and has decided on the basis of the evidence of record that the findings of fact contained in the order of June 20, 1939, are unsupported by substantial evidence. It is manifest from the face of the opinions, however, that the Court did not decide that the Secretary's order is unsupported by substantial evidence in that sense, but decided instead that the order is unsupported by substantial evi-
417 dence because the Secretary failed to present or have presented in the reopened proceeding the type of evidence which the Court concluded as a matter of law was essential to support the determinations made. As we have said before, the Court cannot consistently hold the Secretary's order invalid for lack of evidence of record relating to actual conditions during the impounding period and at the same time hold that on the basis of the evidence of record petitioners' rates during the impounding period were reasonable and the Secretary's rates for that period

are unreasonable. Accordingly, respondents, without waiving their objection to the adoption of such a conclusion, propose that the Court deny petitioners' request for the adoption of paragraph 5 as worded and adopt in its place a conclusion worded substantially as follows:

"5. The Secretary did not present or have presented in the reopened proceeding the type of evidence necessary as a matter of law to support the findings of fact contained in the order of June 20, 1939, i. e., evidence as to actual conditions during the period involved, although as appears from the Kitchen memorandum such evidence was available. Hence the said findings of fact are not supported by substantial evidence of the kind necessary as a matter of law to support the order and the said order is therefore invalid."

2. Respondents object to paragraph 6 of petitioners' proposed additional conclusions of law on the round that it is not supported by the record or by the opinions of the majority of the Court and is vague and uncertain in meaning. It is not clear whether the proposed conclusion means that the Secretary erroneously excluded relevant facts and circumstances from evidence or whether it means that the Secretary erroneously ignored relevant facts and circumstances of record and excluded them from his deliberations upon the case. The record supports neither conclusion; but if any such conclusion is to be adopted
418 respondents submit that there should be no ambiguity in its meaning.

3. Respondents submit that the conclusions of law submitted by the parties pursuant to agreement are incomplete and inadequate to express the conclusions of the Court as expressed in the opinions filed herein. Since petitioners have failed to request the adoption of conclusions of law accurately expressing the true basis of the decision herein, respondents, without waiving their objections to the adoption of such conclusions, propose the adoption by the Court of conclusions of law worded substantially as follows:

"11. By reason of a preconceived fixed erroneous conception of the authority conferred upon him by the Packers and Stockyards Act, the Secretary denied to petitioners the fair hearing required by the due process clause before an impartial tribunal as a trier of the facts."

The above conclusion of law is drawn from the following statement in the opinion of Judge Van Valkenburgh:

"In our judgment also it establishes the fact that by reason of a preconceived fixed erroneous conception of the authority conferred upon him by the Packers and Stockyards Act, the

Secretary denied to petitioners the fair hearing required by the due process clause before an impartial tribunal as the trier of the fact.

"12. Petitioners did not receive before an impartial tribunal the full and fair hearing contemplated by law because the Secretary was not an impartial trier of the facts but was disposed too strongly in favor of one side in the controversy."

The above conclusion of law is drawn from the following statement in the opinion of Judge Reeves:

419 Furthermore, the Secretary did not grant to the petitioners the full and fair hearing contemplated by law, and he was disposed too strongly in favor of one side in the controversy.

13. Because of this lack of impartiality the Secretary of Agriculture should have disqualified himself in the reopened proceeding.

Respectfully submitted.

WENDELL BERGE,
Wendell Berge,
H. B. COX,
Hugh B. Cox,
J. C. WILSON,
James C. Wilson,
*Special Assistants to the Attorney General.*
S. R. BRITTINGHAM, JR.,
*Special Attorney.*

[File endorsement omitted.]

420 In United States District Court

*Reply to respondents' objections to petitioners' proposed findings and conclusions and request for additional findings*

Filed May 29, 1940

ADDITIONAL FINDINGS OF FACT

1. Respondents in this paragraph object to the statement in this finding that the changes shown in evidence in the conditions affecting petitioners' businesses and methods of operation during the impounding period as compared with that existing during the test years was disregarded by the Secretary in the order of June 20, 1939. This objection is met by the elimination of this phrase from the proposed finding No. 19. Petitioners consent to this elimination because they believe it to be covered in other proposed findings consented to by respondents.

2. Respondents suggest the addition to finding of fact
421 No. 20 of the sentence stating that "Petitioners were given an opportunity to file and did file written objections and exceptions to the said report." Petitioners consent to this addition.

3. Respondents object to paragraph 22 of petitioners' proposed additional findings. We believe this finding of fact as proposed to be in strict accord with the evidence and predicated upon the opinions filed by the majority members of the court. The form of petitioners' proposed finding is not in its effect substantially at variance with the substituted finding as proposed by respondents.

4. Respondents' objection to Finding No. 28 of petitioners' proposed additional findings has been met in large part, at least, by amendment of Finding No. 28 as originally proposed. We believe the objection to be without merit and that the finding as suggested by petitioners is in strict accord with the evidence and the opinions of the majority members of the court.

5. Respondents object to Finding No. 30 of petitioners' additional findings on two grounds. First, that it is not justified by the opinions of the majority of the court; and, second, that it is not supported by the record.

In the opinion of Reeves, J., the following statement appears: "It is my view that the order of the Secretary is unreasonable and that it was without evidentiary support."

This finding, which relates to the extent of the so-called margin between reasonable costs and the yield of the prescribed rates, is clearly, definitely, and unquestionably supported by all
422 of the evidence in the record and before the court. It is dependent upon mathematical calculations clearly made, based upon undisputed facts in the record. That there was no margin either in the rates above the so-called reasonable costs as to the test year 1931 and certainly not as to the period of the impounding follows as a matter of course if Social Security taxes as shown by the order, public liability insurance expense as shown by the evidence, and Live Stock Exchange expenses as shown by the Government's own accountant, and rate case expense as shown by the order are added to the other reasonable costs recognized by the order and deducted from the margin therein stated to exist. This is all that the finding states. The finding is important and should be made by the court in the interest of arriving at and presenting a complete determination of the issues as reflected by the statements made in the majority opinions.

6. Respondents object to Finding No. 33 of petitioners' proposed additional findings. This finding consists of a brief statement to the effect that the increase during the impounding period in petitioners' expenses of operation and conduct of their re-

spective businesses was not provided for in the rate schedules prescribed. This finding is not only squarely predicated upon the conclusions reached in the opinions of the majority members of the court, but does not, as respondents suggest, involve argument as to the extent of such increase in said expenditures.
423 The original brief of petitioners upon the merits and upon the evidence reflects the extent of such increase as applied to the businesses of petitioners. The finding, however, does not measure the extent of the increase, but it is manifestly a fact that the incidental rates prescribed as of June 14, 1933, incorporated in the order of June 20, 1939, would not give consideration to an increase in expenditures as admittedly shown by the evidence.

ADDITIONAL CONCLUSIONS OF LAW

1. Respondents object to conclusion of law No. 5 as proposed by petitioners, which states that the findings of fact contained in the order are unsupported by substantial evidence. We have modified this conclusion of law No. 5 in order that it may follow more precisely the language contained in the opinion of Reeves, J., of the majority. As now proposed in the light of respondents' objection it will read as follows:

"The order of June 20, 1939, of the Secretary is unreasonable and is without evidentiary support."

Respondents have suggested a substitute or additional conclusion under this heading. Our objection to the proposed additional statement is that the substitution constitutes an attempt to make it appear that it was only the so-called Kitchen memorandum which indicated that evidence as to the actual conditions prevailing during the impounding period was available and disregarded, whereas petitioners' evidence introduced at the rehearing, as shown by prior findings consented to by respondents, discloses that such was not the fact. The first part of this suggested substitution by respondents is also subject to the objection
424 that it seems calculated to create the inference that there was no evidence offered as to the actual conditions during the period involved, whereas evidence of this character was offered by petitioners as disclosed by the findings agreed to by respondents.

2. Respondents object to proposed additional conclusion of law No. 6 on the ground that it is not supported by the record or by the opinions of the majority of the court and is vague and uncertain. Petitioners urge that it is supported by the record and by the opinions of the majority of the court. It is not subject to the respondents' objection that it is vague and uncertain. On the contrary, it follows the findings showing that the Secre-

tary did improperly exclude the facts and circumstances relevant to the determination he was undertaking to make.

3. Petitioners object to the addition of conclusions Nos. 11, 12, and 13 as proposed by respondents. Conclusions Nos. 2 and 4, which have been agreed to by the respondents, adequately cover the subject and make it unnecessary to add conclusions Nos. 11 and 12 as proposed by respondents.

In respondents' proposed conclusion No. 11 they undertake to have it stated as to the reason why petitioners were denied a fair hearing. The reason is unimportant. The fundamental thing is that the hearing was not a fair hearing before an impartial tribunal.

Conclusion No. 13 proposed by respondents is also objected to. It goes beyond the opinions of the majority of the court. This proposed conclusion No. 13 should, therefore, not be given.

Respectfully submitted.

FREDERICK H. WOOD,
JOHN B. GAGE,
THOMAS T. COOKE,
CARSON E. COWHERD,
*Attorneys for petitioners.*

[File endorsement omitted.]

425 In United States District Court

*Petitioners' request for additional findings and conclusions*

Filed May 29, 1940

Come now petitioners herein and in addition to the findings and conclusions contained in Exhibit A hereto attached and made a part hereof, which are proposed by petitioners and agreed to by respondents as to form and content only and not otherwise, petitioners propose the following additional findings and conclusions, which are objected to by respondents as to form, content, and otherwise, and which are numbered so as to correspond to the omitted numbers in the proposed findings and conclusions set out in said Exhibit A.

*Additional findings of fact*

19. Hearings were held by said Examiner. No evidence was offered by the Government at such hearings other than the evidence in the record of the original proceedings based
426 principally upon the test years 1929 and 1931. This evidence as bearing upon the impounding period from July

22, 1933, to November 1, 1937, cannot be considered as substantial. Evidence of the actual conditions obtaining during said impounding period was readily available. Petitioner market agencies, over the objection of the Government that it was wholly immaterial, introduced into the record a great deal of evidence, documentary and oral, which showed that conditions as to petitioners' business and methods of operations had substantially, and in some respects, radically, changed since the completion of the original record. Such evidence may be summarized as follows:

(a) The volume of livestock handled by petitioner market agencies and their gross receipts from the sale and purchase thereof greatly declined.

(b) There was no substantial decline in volume of livestock available to petitioners in the territory from which they obtain their business at Kansas City.

(c) The cost of living in Kansas City increased 12 percent during the impounding period.

(d) The number of consignments or work units in a given quantity of livestock bought and sold by petitioner market agencies greatly increased, which greatly increased the expense of handling the same.

(e) The prices received for livestock by the producers and shippers thereof substantially increased, which caused a decline in the ratio of rates charged by petitioner market agencies to the value of such livestock.

427 (f) The ratio of headage of calves to total headage of calves and cattle handled by petitioner market agencies increased steadily during the impounding period as compared with said ratio for the year 1931.

(g) No market agency at Kansas City in 1931, or since then, in the sale of cattle and calves has reached the standard of performance of 24,000 head per salesman per year as fixed in said order of June 20, 1939.

20. On or about February 17, 1939, Trial Examiner John C. Brooke issued a tentative report proposing substantially all of the findings contained in the invalidated order of June 14, 1933, and proposing the repromulgation of the schedule of rates contained therein without change, and petitioners' motion to suppress said report was denied.

22. The Secretary of Agriculture did not personally weigh or appraise the evidence either in its original form or as sifted and analyzed by his subordinates, but in determining upon the findings issued by him June 20, 1939, adopted as his own findings in the tentative report made by the Trial Examiner as heretofore stated, which said findings were substantially the same as those made by the "active prosecutors for the Government" in the original proceeding.

28. The Trial Examiner, being under the domination
428 and control of the Secretary and having been publicly instructed by him as to the result he desired, was not an impartial trier of the facts, even if the Examiner had been authorized to so act, which he was not.

30. The rates prescribed in the order of June 20, 1939, did not either as applied to the year 1931 nor as applied during any year of the impounding period provide petitioner market agencies a margin of $100,923.57, as stated in paragraph 163a of said order of June 20, 1939, between the revenues produced under the rates and the reasonable costs together with a reasonable profit as allowed by said order. On the contrary, because of the error made in the order in estimating the yield from said rates and of the necessity of surcharging this alleged margin with a proper annual allowance for Social Security taxes, public liability insurance, administrative and general expenses for the support and maintenance of the Kansas City Live Stock Exchange, and for the entire rate case expense sustained by petitioners instead of only that part thereof attributed to the administrative proceedings and amortizing this rate case expense over the 4.27 year period of the impounding of said fund instead of over a ten year period as allowed by the order, there was no margin, but instead a yearly deficit resulted from the operations of petitioner market agencies.

33. Because of the rigidity of the rate schedules prescribed in said order of June 20, 1939, the increase, during the impounding period, in petitioners' expenses of operating and conducting their businesses was not provided for in said schedules of rates.

429 *Additional Conclusions of Law*

5. The order of the Secretary dated June 20, 1939, is unreasonable and is without evidentiary support.

6. The Secretary of Agriculture erroneously excluded from consideration in the reopened proceeding facts and circumstances material and relevant to the determination he was undertaking to make.

Wherefore, petitioners request this court to make the findings of fact and conclusions of law as contained in said Exhibit A and also the additional findings and conclusions proposed by petitioners hereinbefore mentioned and set out.

FREDERICK H. WOODS,
JOHN B. GAGE,
THOMAS T. COOKE,
CARSON E. COWHERD,
*Attorneys for Petitioners.*

[File endorsement omitted.]

430 *Exhibit A*

In United States District Court

*Findings and conclusions*

Filed May 29, 1940

In accordance with the separate written opinions of Honorable Arba Van Valkenburgh, Circuit Judge, and Honorable Albert L. Reeves, District Judge, filed herein on April 9, 1940 (Honorable Merrill E. Otis, District Judge, having on said date filed his separate dissenting opinion), the Court makes the following Findings of Fact and Conclusions of Law, to wit:

*Findings of fact*

1. This cause came on to be heard by this Court on January 9, 1940. The evidence presented to the Court at that time, and upon which the findings and conclusions hereinafter made are based, consisted of (1) all the evidence, documents and exhibits constituting the record in the several administrative hearings before the Secretary of Agriculture, including the reopened administrative proceedings; (2) the testimony, cross-examination,
431 and exhibits offered and introduced in this Court upon the examination of the witness John A. Roberts at a former hearing in this matter; (3) the deposition of Henry A. Wallace taken by respondents at a former hearing in this court in this proceeding, together with the exhibits attached to such deposition; (4) the testimony of Henry A. Wallace, who was called and examined by petitioners as a witness in their behalf in the last hearing in this court; and (5) the several documents produced at petitioners' demand by the said Henry A. Wallace during the course of his examination in the last hearing in this court, consisting of interdepartmental communications passing between the said Henry A. Wallace and his assistants and subordinates after the oral argument before him but prior to his issuance of the order now under review. Respondents seasonably objected to the rulings of the court with respect to the introduction at the last hearing of the evidence referred to in subdivisions (2), (3), (4), and (5).

20. Pursuant to an order of inquiry issued April 7, 1930, the Secretary of Agriculture conducted an investigation into the justness and reasonableness of the rates currently being charged by petitioners to the shippers of livestock at the Kansas City

Stockyards, which rates and charges had been formally approved by a prior Secretary of Agriculture under date of July 27, 1923. Evidence was taken with relation to the test year 1929.

3. Prior to the entry of an order in the proceeding thus instituted, the petitioner market agencies, on May 11, 1932, filed with the Secretary of Agriculture a tariff which became effective May 23, 1932, containing a schedule of reduced rates and charges, the amount of the reduction being approximately 10%.

4. On or about July 15, 1932, the Secretary of Agri-
432 culture, by reason of changed conditions, ordered a rehearing in which rehearing evidence was taken relating principally to the test year 1931.

5. On June 14, 1933, the Secretary of Agriculture issued an order purporting to finally fix the rates and charges of petitioners heretofore referred to.

6. On July 19, 1933, petitioner market agencies filed with this Court petitions to set aside this order of the Secretary of Agriculture and to enjoin the operation of the same pendente lite.

7. On July 22, 1933, this Court issued its injunction restraining the Secretary of Agriculture from enforcing the rates and charges contained in his said order pending the disposition of the cause before this Court, upon condition, however, that the petitioner market agencies should impound with this Court all moneys received by them from collections in excess of the rates and charges contained in the Secretary's order of June 14, 1933.

8. On November 1, 1937, the impounding under the injunction of this Court ceased by reason of the acceptance by petitioner market agencies of new rates agreed upon with the Secretary of Agriculture. There then was, and now is, in the custody of this Court an impounded fund amounting to the sum of $586,093.32.

9. On April 25, 1938, a decision of the United States Supreme Court, entitled Morgan v. United States, 304 U. S. 1, invali-
dated the "Proceedings, Findings of Fact, Conclusion, and
433 Order" issued June 14, 1933, by the Secretary of Agriculture in Bureau of Animal Industry Docket No. 311, the designation given by the Secretary of Agriculture to the administrative proceedings hereinbefore referred to.

10. On May 3, 1938, Secretary of Agriculture, Henry A. Wallace, publicly expressed, in a letter to The New York Times, his fixed opinion and preconceived conviction, as to the rightful ownership of said impounded funds, and thereby announced his determination that the result of any future proceeding before him would be the awarding of said impounded funds to the shippers of livestock, from whom the fund was derived through the

rates charged by petitioners for buying and selling their livestock, notwithstanding the fact that the Secretary of Agriculture interpreted the decision of the Supreme Court to the contrary.

11. On May 31, 1938, the United States Supreme Court denied a petition for rehearing filed by the Solicitor General on behalf of the Secretary of Agriculture (Morgan v. United States, 304 U. S. 23).

12. On June 2, 1938, the Secretary of Agriculture issued an order purporting to reopen the administrative proceedings, and commanded that the invalidated "Proceedings, Findings of Fact, Conclusion, and Order" issued by the Secretary of Agriculture on June 14, 1933, be served upon the petitioner market agencies as the tentative findings of fact, conclusion, and order of the Secretary of Agriculture in the reopened proceeding.

434 13. Petitioners seasonably moved before the Secretary of Agriculture to set aside and suppress said "Proceedings, Findings of Fact, Conclusion and Order," issued as of June 14, 1933, and invalidated by the United States Supreme Court, on the ground, as found by said Court, that said findings, conclusion and order had been made by the "active prosecutors for the Government," and upon the further ground that said findings were based solely upon evidence which was outmoded, speculative, hypothetical and remote, which motion was denied on August 26, 1938.

14. On or about August 15, 1938, petitioner market agencies filed with the Secretary an affidavit stating that the record made in the former hearings before the Secretary was stale, incomplete and inappropriate for determining rates during the impounding period because since the close of the prior hearings conditions on the Kansas City livestock market had changed in the following respects:

(a) A very substantial decrease in the receipts of livestock in Kansas City, resulting in diminished gross income of the petitioners;

(b) Increased cost of living and a reasonable demand by necessary employees for increased wages and compensation;

(c) A marked increase in the arrival of livestock by truck, which necessarily increased the handling of small consignments, occasioning more work and greater expense per head handled;

(d) Increased costs of stationery, printing, postage, and other material;

(e) Increased expenses due to taxes as the result of

435 Federal and State legislation since 1931;

(f) Drought in the territory tributary to the Kansas City market during a portion of said period, which greatly

increased the seasonality or variation in receipts, resulting in heavy runs at certain periods and a minimum of receipts at other periods, and which depleted the producing herds of livestock in the territory tributary to said market;

(g) A very much higher level of livestock prices than those existing in the latter part of the year 1931 and the first part of the year 1932.

15. On or about August 15, 1938, petitioner marketing agencies, preserving all objections theretofore made, filed a motion requesting that the Secretary appoint an examiner to hear the evidence which petitioners desired to offer as to the changes in conditions since the close of evidence in the prior hearing.

16. On August 26, 1938, the Secretary issued an opinion on petitioners' several motions in which, among other things, he said that he entertained no intention of depriving petitioners of the opportunity of offering evidence concerning conditions affecting the reasonableness of their rates during the period subsequent to June 14, 1933, and that he would designate an examiner to hear such further evidence as the said examiner might find was material and relevant in regard to conditions subsequent to June 14, 1933, which affected the reasonableness of the rates to be fixed by him in the reopened proceeding.

436 17. On August 15, 1938, the petitioner market agencies filed an affidavit of bias and prejudice against the Secretary and his subordinates and moved that he disqualify himself and his subordinates from acting as the trier of the facts in the reopened proceedings, which motion was denied on August 26, 1938.

18. Thereafter and on or about August 26, 1938, the Secretary of Agriculture issued an order appointing as Trial Examiner one John C. Brooke, a subordinate employee of the Department of Agriculture attached to the Solicitor's department, in which the prosecuting functions of the Department of Agriculture are vested.

21. The Secretary heard oral argument on the aforesaid written exceptions. Subsequently to the said oral argument the Secretary conferred with the trial examiner concerning the evidence and the findings to be made thereon, out of the presence of petitioner market agencies and their counsel and refused to disclose, although such a disclosure was duly demanded, the substance of such conversations to the petitioner market agencies or their counsel. Thereafter, as appears from his testimony in open court, the Secretary directed the examiner, in preparing the final order issued by the Secretary on June 20, 1939, to change certain portions of the examiner's proposed findings, conclusion, and order, and to add the tables found in paragraphs 139 to 142 of the said

final order, which tables are based upon accounting work papers received in evidence by the examiner over petitioners' objection that they had not been properly identified.

437 23. The object of the Secretary of Agriculture throughout the reopened proceedings was to procure the validation nunc pro tunc of the fatally defective order of June 14, 1933.

24. Throughout the reopened proceedings, the Secretary of Agriculture entertained the misconception that the only error found by the Supreme Court in the prior proceeding which led to the invalidation of the order issued by him therein was the failure to permit a full argument on the findings and conclusions with full understanding of the issues presented, whereas the Supreme Court had also held that such findings had been improperly made by the "active prosecutors for the Government" and had been adopted by the Secretary of Agriculture without addressing himself to the evidence in the manner required by the Packers and Stockyards Act.

25 The Kitchen memorandum standing alone and certainly in connection with other evidence offered by petitioner market agencies but disregarded by the Secretary shows that no effort was made by the Secretary of Agriculture to ascertain the actual reasonableness of the rates charged by petitioners during the impounding period on the basis of actual experience instead of on the basis of hypothesis and forecast. The new hearing accorded to petitioners was thus perfunctory and the alleged correction of procedural error contained in the original proceeding was unsubstantial.

26. The Trial Examiner excluded from consideration facts and circumstances relevant to the determination to be made and was upheld by the Secretary of Agriculture in said rulings.

438 27. The Secretary of Agriculture was not an impartial trier of the facts.

29. The findings contained in the order issued by the Secretary of Agriculture on June 20, 1939, are not supported by substantial evidence.

31. The Examiner denied the request of petitioner market agencies, made during the reopened hearing, that the annual reports of the Producers Commission Association and of the Farmers Union Live Stock Commission Company filed with the Secretary for the years from 1932 to 1937, inclusive, be produced for introduction by them in evidence, and the Secretary by his said order of June 20, 1939, sustained this ruling.

32. There is no finding in said order of June 20, 1939, as to whether or not any of the petitioner market agencies were inefficient or wasteful in the operation of their respective businesses.

*Conclusions of law*

1. Petitioners did not receive from the Secretary of Agriculture the full hearing required by the Packers and Stockyards Act.

2. Petitioners did not receive from the Secretary of Agriculture the full, fair, and open hearing required by the due process clause of the Fifth Amendment to the Constitution of the United States.

439 3. This proceeding is no longer strictly an administrative matter under the Packers and Stockyards Act since the order of the Secretary under review determines rates for a past period rather than for the future.

4. The Secretary denied to petitioners the full and fair hearing before an impartial tribunal as a trier of the facts contemplated and required by law.

7. The burden of making a determination which would equitably support a distribution of the impounded funds and the burden of finding the rates contained in the tariffs filed by the petitioner market agencies to be unreasonable was upon the Secretary of Agriculture, and he failed to sustain the aforesaid burden.

8. The acceptance by this Court of the rates contained in the Secretary's order of June 20, 1939, as the basis for the distribution of the impounded funds would produce an unjust, inequitable and unlawful result.

9. The main purpose of the hearings before the Secretary upon which said order of June 20, 1939, was issued was to make findings and to issue an order for the purpose of assisting the Court in making an equitable disposition of the impounded fund, and the burden of making findings adequately supported by evidence and a valid order providing for such disposition of said funds was upon the Secretary.

440 10. The petitioner market agencies are entitled to have the funds impounded in this Court restored to them.

ARBA S. VAN VALKENBURGH,
*Circuit Judge.*

ALBERT L. REEVES,
*District Judge.*

———— ————,
*District Judge.*

Pursuant to agreement with petitioners, the respondents, the United States of America and the Secretary of Agriculture, state:

1. That they have no objection to the form or content of the

Findings of Fact contained in paragraphs numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 21, 31, and 32.

2. That they object to the content of the Findings of Fact contained in paragraphs numbered 10, 13, 23, 24, 25, 26, 27, and 29, and to the content of the Conclusions of Law contained in paragraphs numbered 1, 2, 3, 4, 7, 8, 9, and 10. Without waiving such objection respondents state that the foregoing paragraphs appear to conform substantially to the findings of fact and conclusions of law stated in the opinions of the Court filed herein.

WENDELL BERGE,
Wendell Berge,

H. B. COX,
Hugh B. Cox,

J. C. WILSON,
James C. Wilson,

*Special Assistants to the Attorney General.*

S. R. BRITTINGHAM, Jr.,
S. R. Brittingham, Jr.,
*Special Attorney.*

[File endorsement omitted.]

441 In United States District Court

*Supplemental findings of fact and conclusions of law*

Filed May 29, 1940

In addition to the findings of fact and conclusions of law this day made by the court, petitioners have asked for additional findings of fact 19, 20, 22, 28, 30, 33, and two additional conclusions of law 5 and 6 (reference is made to document filed herewith, entitled "Petitioners' Request for Findings and Conclusions").

The requested additional findings of fact and requested additional conclusions of law are by the court made and stated as the court's findings and conclusions.

ARBA S. VAN VALKENBURGH,
*United States Circuit Judge.*

ALBERT L. REEVES,
*United States District Judge.*

———— ————,
*United States District Judge.*

[File endorsement omitted.]

442 In United States District Court

*Decree*

Filed May 29, 1940

This cause came on for final hearing on petitioners' return to the order entered at the instance of respondents and directed to petitioners to show cause why the moneys heretofore deposited with the Clerk of this Court by petitioners, amounting to $586,-093.32, should not be returned in accordance with the order of the Secretary of Agriculture dated June 20, 1939, in a proceeding pending before the Secretary of Agriculture known as "Secretary of Agriculture v. L. B. Andrews, et al., Docket No. 311," and respondents' answer to said petitioners' return. The record made at the hearings before the Secretary was received in evidence by this Court and oral testimony and other evidence were presented by petitioners, oral arguments were made, briefs were filed, and the cause was finally submitted to this Court by counsel for both parties, and the cause having been fully submitted to this court and in accordance with the views heretofore expressed in the separate written opinions of Honorable Arba Van Valkenburgh, Circuit Judge, and Honorable Albert L. Reeves, District Judge, filed herein, and, upon motion of counsel for petitioners.

443 It is hereby ordered, adjudged, and decreed that the order of the Secretary of Agriculture dated June 20, 1939, is ineffective and void, and hence does not constitute a basis upon which the said impounded fund should be distributed.

It is further ordered, adjudged, and decreed that said impounded fund shall be returned to and distributed among the petitioners in accordance with the order of this court entered herein under date of June 18, 1938.

ARBA S. VAN VALKENBURGH,
*Circuit Judge.*

ALBERT L. REEVES,
*District Judge.*

MERRILL E. OTIS,
*District Judge.*

[File endorsement omitted.]

444 In United States District Court

*Petition for order staying the enforcement of the final order and decree entered on May 29, 1940, by the District Court of the United States for the Western District of Missouri*

Filed June 7, 1940

To the Honorable Arba S. Van Valkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, the Honorable Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, and the Honorable Albert L. Reeves, Judge of the District Court of the United States for the Western District of Missouri, sitting as a district court for said District, pursuant to section 316 of the Packers and Stockyards Act of August 15, 1921 (c. 64, 42 Stat. 168; U. S. C. Tit. 7, sec. 217), the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 220; U. S. C. Tit. 28, secs. 44 and 47a), and the Act of February 13, 1925 (c. 229, 43 Stat. 938; U. S. C. Tit. 28, sec. 345):

Now come the United States of America and the Secretary of Agriculture, defendants in the above entitled cause, and respectfully move this Court to enter an order staying and suspending the enforcement, operation, and execution of the final order and decree entered by this Court on May 29, 1940, pending the perfection of an appeal therefrom to the Supreme Court of
445 the United States and also during the pendency of the said appeal, and in support thereof respectfully represent:

1. On May 29, 1940, this Court entered a final order and decree setting aside the order of the Secretary of Agriculture of June 20, 1939, and granting petitioners' motion for the restitution to them of the funds impounded in this Court pursuant to the interlocutory order entered on July 22, 1933, and continued in effect from time to time thereafter.

2. The defendants will, as soon as it is possible to do so, prepare and file with this Court all pleadings necessary to perfect an appeal from the said final order and decree to the Supreme Court of the United States, but the preparation and filing of said pleadings will necessarily require several days.

3. Upon appeal the defendants will contend that this Court erred in holding that the order of the Secretary of Agriculture of June 20, 1939, is invalid and not the appropriate basis upon which to distribute the funds impounded in this Court as aforesaid, and in ordering the said fund distributed to petitioners. Defendants will further contend that the ownership of the moneys

now impounded in this Court depends on the lawfulness and reasonableness of the schedule of rates and charges under which the said moneys were collected; that no distribution of the said moneys may properly be made until there has been a lawful determination as to what rates and charges were reasonable during the period when the said moneys were collected; and that it was error for this Court to order the said impounded fund distributed to petitioners prior to a valid determination by the Secretary of Agriculture as to the lawfulness and reasonableness of the
446 schedule of rates and charges under which the said moneys were collected by petitioners. If the final order and decree of this Court made on May 29, 1940, becomes effective prior to the determination of the said appeal, the question as to whether the aforesaid moneys may now lawfully be distributed to the petitioners will have become moot; the right of the defendants to have that question determined in an orderly manner by the Supreme Court of the United States in accordance with the applicable statutes will be destroyed; the claim of defendants on behalf of the patrons of petitioners of an interest in the aforesaid moneys will have been impaired or lost; the security afforded by the said moneys for enforcing the rights of defendants and of petitioners' patrons to an authoritative determination as to the reasonableness of the rates and charges collected by petitioners will have been dissipated; and the rights of the defendants will otherwise have been irreparably damaged.

Wherefore, defendants respectfully move this Court to enter an order staying the operation of its aforesaid final order and decree dated May 29, 1940, pending the perfection of an appeal herein to the Supreme Court of the United States and until the determination of said appeal by the Supreme Court.

WENDELL BERGE,
Wendell Berge,
JAMES C. WILSON,
James C. Wilson,
*Special Assistants to the Attorney General.*

[File endorsement omitted.]

447 In United States District Court

*Order allowing a stay of the final order and decree entered on May 29, 1940, by the Distict Court of the United States for the Western District of Missouri*

Filed June 7, 1940

Whereas, by petition filed on the 7 day of June 1940, the United States of America and the Secretary of Agriculture, defendants in the above-entitled cause, pray that this Court grant a stay of the operation of its final order and decree dated May 29, 1940, which set aside the order of the Secretary of Agriculture of June 20, 1939, and granted petitioners' motion for the restitution of all impounded funds theretofore deposited by them with the Clerk of this Court between July 22, 1933, and November 1, 1937, pursuant to the terms of a temporary restraining order issued by this Court on July 22, 1933, and extended from time to time thereafter;

And whereas, this Court finds that the defendants propose, with due diligence, to prosecute an appeal to the Supreme Court of the United States from the said final order and decree and that irreparable damage would ensue unless the operation of
448 the said final order and decree be stayed pending the perfection of such appeal and likewise during the pendency thereof in the said Supreme Court.

It is hereby ordered, adjudged, and decreed that if the defendants perfect their appeal within thirty days from the date of said final order and decree, such final order and decree be stayed in whole from this date until the determination of said appeal by the Supreme Court of the United States.

ARBA S. VAN VALKENBURGH,
Arba S. Van Valkenburgh,
*Judge of the Circuit Court.*

ALBERT L. REEVES,
Albert L. Reeves,
*Judge of the District Court.*

MERRILL E. OTIS,
Merrill E. Otis,
*Judge of the District Court.*

This 7th day of June 1940.

[File endorsement omitted.]

449 In the United States District Court

*Notice of appeal*

Filed June 25, 1940

To F. O. Morgan, doing business as F. O. Morgan Sheep Commission Company, J. M. Ragland, W. B. Storts and W. L. Burrus, doing business as Ragland, Storts & Burrus, H. H. Klecker, doing business as Hinie Klecker Sheep Commission Company, R. H. Lewis and S. H. Flournoy, doing business as Lewis-Flournoy Livestock Commission Company, Grover C. Maxwell and Ben J. Furnish, partners, doing business as Maxwell-Furnish Livestock Commission Company, John M. Nichols, doing business as The John M. Nichols, Livestock Commission Company, Bowles Livestock Commission Company, a corporation, S. G. Smith, R. H. Rea and T. M. Brandon, doing business as Crider Brothers Commission Company, Charles Dixon Livestock Commission Company, a corporation, R. W. Elliott and E. K. Swain, partners doing business as Elliott, Swain & Company, Farrar, Davis & Campbell Livestock Commission Company, a corporation, W. J. Gladish, doing business as Gladish Livestock Commission Company, O. C. Haggart, John N. Wilson and Glenn H. Haggart, partners doing business as Haggart-Wilson Livestock Commission Company, William M. Liggett, doing business
450 as Kansas City Livestock Commission Company, Fern O. Sanders, doing business as F. O. Sanders Livestock Commission Company, Stuart-Robinson-Hoover Livestock Commission Company, a corporation, R. W. Wester and Joseph P. Smith, partners doing business as Wester Brothers & Smith Livestock Commission Company, Stagner, Peironnet & Willis Livestock Commission Company, a corporation, George S. Tamblyn, doing business as Tamblyn Commission Company, Henry F. Carnes, doing business as The Henry F. Carnes Livestock Commission Company, Warren Cummings, doing business as Warren Cummings Livestock Commission Company, Drumm-Standish Commission Company, a corporation, E. B. Perry, B. W. Perry and A. E. Long, partners doing business as Long-Perry Livestock Commission Company, L. E. Tice, doing business as Knight & Tice Sheep Commission Company, Charles F. Vierogg and Robert H. Stover, partners, doing business as W. M. Letich Sheep Commission Company, National Live Stock Commission Company, a corporation, Bry-

ant Poole, D. L. Dempsey and James Rutherford, partners, doing business as Poole-Dempsey-Rutherford Livestock Commission Company, J. P. Stous and N. C. Gleason, co-partners, doing business as Ehrke-Martin Livestock Commission Company, John Clay, F. H. Connor, and Alan F. Wilson, co-partners, doing business as John Clay & Company, Ralph W. Wright and William M. Baucus, partners, doing business as Wright & Baucus Livestock Commission Company, Swift & Henry Livestock Commission Company, a corporation, L. Knop, Henry F. Theis, F. W. Theis and A. C. Theis, partners doing business as H. Theis & Son, Sam Knighton, doing business as Sam Knighton Livestock Commission Company, J. M. Laird and C. T. Laird, doing business as Laird Brothers Livestock Commission Company, Martin, Blomquist & Lee Commission Company, a corporation, H. M. Baker, W. C. Bradshaw, Barney Mets, Louise M. Moffitt, partners doing business as Moffitt Livestock Commission Company, Jay
D. McCormick, doing business as Jay D. McCormick
451 Livestock Commission Company, W. C. Kile, doing business as Kile Commission Company, Ryan-Robinson Commission Company, a corporation, Ben L. Welch, doing business as Welch Livestock Commission Company, Witherspoon Livestock Commission Company, a corporation, W. E. Curtis, doing business as W. E. Curtis and Company, Norman B. Greer, doing business as Greer & Company, Inham-Hutton Livestock Commission Company, Walter G. Land and John E. Maze, partners doing business as Walter G. Land Livestock Commission Company, Less White, doing business as Less White Livestock Commission Company, Wilson, Egan & Company, a corporation, Burlington Livestock Commission Company, a corporation, Cassidy Southwestern Livestock Commission Company, a corporation, and New Amsterdam Casualty Company, a corporation, petitioners:

Please take notice that, pursuant to the statutes and rules of court in such cases made and provided, the United States of America and the Secretary of Agriculture, defendants in the above-entitled cause, do hereby appeal to the Supreme Court of the United States from the final order and decree of the District Court of the United States for the Western District of Missouri, entered on the 29th day of May 1940, which set aside the order of the Secretary of Agriculture of June 20, 1939 and granted petitioners' motion for the restitution of all impounded funds theretofore deposited by them with the Clerk of this Court between July 22, 1933 and November 1, 1937, pursuant to the

terms of a temporary restraining order issued by this Court on July 22, 1933, and extended from time to time thereafter.

THURMAN ARNOLD,
Thurman Arnold,
*Assistant Attorney General,*
WENDELL BERGE,
Wendell Berge,
*Special Assistant to the Attorney General,*
*For the United States of America.*

This 25th day of June 1940.

[File endorsement omitted.]

452 Service of the foregoing Notice of Appeal and the receipt of a copy therof are hereby acknowledged this 25th day of June 1940.

FREDERICK H. WOOD,
Frederick H. Wood,
JOHN B. GAGE,
John B. Gage,
*Solicitors for Petitioners.*

453 In United States District Court

*Petition for appeal*

Filed June 25, 1940

To the Honorable Arba S. Van Valkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, the Honorable Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, and the Honorable Albert L. Reeves, Judge of the District Court of the United States for the Western District of Missouri, sitting as a district court for said District, pursuant to section 316 of the Packers and Stockyards Act of August 15, 1921 (c. 64, 42 Stat. 168; U. S. C. Tit. 7, Sec. 217), the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 220; U. S. C. Tit. 28, Secs. 44 and 47a), and the Act of February 13, 1925 (c. 229, 43 Stat. 938; U. S. C. Tit. 28, Sec. 345):

The United States of America and the Secretary of Agriculture, defendants in the above-entitled cause, considering themselves aggrieved by the final order and decree entered by this Court on May 29, 1940, which set aside the order of the
454 Secretary of Agriculture of June 20, 1939, and granted

petitioners' motion for the restitution of all impounded funds theretofore deposited by them with the Clerk of this Court between July 22, 1933 and November 1, 1937, pursuant to the terms of a temporary restraining order issued by this Court on July 22, 1933, and extended from time to time thereafter, do hereby pray an appeal from said final order and decree to the Supreme Court of the United States pursuant to section 316 of the Packers and Stockyards Act of August 15, 1921 (c. 64, 42 Stat. 168; U. S. C. Tit. 7, Sec. 217), the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 220; U. S. C. Tit. 28, Secs. 44 and 47a), and the Act of February 13, 1925 (c. 229, 43 Stat. 938; U. S. C. Tit. 28, Sec. 345).

The particulars wherein the defendants consider the order erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

Said defendants pray that their appeal may be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said final order and decree was based, duly authenicated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

THURMAN ARNOLD,
Thurman Arnold,
*Assistant Attorney General.*

WENDELL BERGE,
Wendell Berge,
*Special Assistant to the Attorney General*
*For the United States of America.*

This 25th day of June 1940.

455 Service of the foregoing Petition for Appeal and the receipt of a copy thereof are hereby acknowledged this 25th day of June 1940.

FREDERICK H. WOOD,
Frederick H. Wood,
JOHN B. GAGE,
John B. Gage,
*Solicitors for Petitioners.*

[File endorsement omitted.]

456 In United States District Court

*Assignment of errors*

Filed June 25, 1940

The United States of America and the Secretary of Agriculture, defendants in the above-entitled cause, in connection with their petition for an appeal to the Supreme Court of the United States, hereby assign error to the record and proceedings and to the entry of the final order and decree of said District Court on the 29th day of May 1940, in the above-entitled cause, and say that in the entry of the said final order and decree the said District Court committed error to the prejudice of said defendants in the following particulars:

1. In holding that the order of the Secretary of Agriculture issued on June 20, 1939, which determined just and reasonable rates to be charged and collected for stock yard services by market agencies in buying and selling livestock at the Kansas City public stock yard during the period from July 22, 1933, to November 1, 1937, is invalid and not the appropriate basis upon which to distribute the fund impounded in the District Court during said period pursuant to an interlocutory order entered by the Court on July 22, 1933, and continued in effect from time to time thereafter.

457 2. In holding that the acceptance by the Court of the rates contained in the Secretary's order of June 20, 1939 as the basis for the distribution of the said impounded funds would produce an unjust, inequitable and unlawful result (Concl. of Law 8).

3. In denying the motion of the defendants for an order distributing the said impounded funds in accordance with the determinations contained in the order of the Secretary of Agriculture issued on June 20, 1939.

4. In granting petitioners' motion for the distribution of the said fund to them and in ordering the said fund so distributed.

5. In holding that petitioners did not receive from the Secretary of Agriculture the full hearing required by the Packers and Stockyards Act (Concl. of Law 1).

6. In holding that petitioners did not receive from the Secretary the full, fair, and open hearing required by the due process clause of the Fifth Amendment to the Constitution of the United States (Concl. of Law 2).

7. In holding that the Secretary of Agriculture was not an impartial trier of the facts (Finding 27).

8. In holding that the Trial Examiner was not an impartial trier of the facts (Finding 28).

9. In holding that the Secretary denied to petitioners the full and fair hearing before an impartial tribunal as a trier of the facts contemplated and required by law (Concl. 4).

458 10. In holding that the Secretary had a fixed opinion and preconceived conviction as to the rightful ownership of the fund impounded in the District Court and was determined that the result of any future proceeding before him would be the awarding of the said impounded funds to the shippers of livestock from whom the fund was derived (Finding 10).

11. In holding that the evidence offered by the Government at the reopened administrative hearing cannot be considered as substantial evidence with respect to the impounding period from July 22, 1933, to November 1, 1937 (Finding 19).

12. In holding that the Secretary of Agriculture did not personally weigh or appraise the evidence either in its original form or as sifted and analyzed by his subordinates, but in determining upon the findings issued on June 20, 1939, adopted as his own the findings contained in the report of the trial examiner (Finding 22).

13. In holding that the object of the Secretary of Agriculture throughout the reopened proceeding was to procure the validation nunc pro tunc of the invalidated order of June 14, 1933 (Finding 23).

14. In holding that throughout the reopened proceeding the Secretary of Agriculture entertained a misconception as to the meaning and import of the prior decisions of the Supreme Court (Finding 24).

15. In holding that the Secretary of Agriculture made no effort to ascertain the actual reasonableness of the rates charged by petitioners during the impounding period on the basis of actual experience (Finding 25).

459 16. In holding that the hearing accorded to petitioners was perfunctory and the correction of the procedural errors contained in the prior proceedings unsubstantial (Finding 25).

17. In holding that the Trial Examiner excluded from consideration facts and circumstances relevant to the determination to be made (Finding 26).

18. In holding that the Secretary of Agriculture excluded from consideration in the reopened proceeding facts and circumstances material and relevant to the determination he was undertaking to make (Concl. of Law 6).

19. In holding that the findings contained in the order issued by the Secretary of Agriculture on June 20, 1939, are not sup-

ported by substantial evidence (Finding 29) and that the said order is unreasonable and without evidentiary support (Concl. of Law 5).

20. In holding that the rates prescribed in the order of June 20, 1939, did not during any year of the impounding period provide petitioner market agencies with a margin of $100,923.57, as stated in paragraph 163a of said order, between the revenues produced under the rates and the costs and profits found reasonable by said order (Finding 30).

21. In holding that the Secretary of Agriculture incorrectly estimated the yield from said rates (Finding 30).

22. In holding that in computing the reasonable cost to petitioners of doing business during the period of impounding the Secretary failed to make a proper annual allowance for social security taxes, public liability insurance, administrative
460 and general expenses for the support and maintenance of the Kansas City Live Stock Exchange, and for the entire rate case expense sustained by petitioners throughout the administrative and court proceedings in this case amortized over the 4.27 year period covered by the order of June 20, 1939 (Finding 30).

23. In holding that by reason of the Secretary's disallowance of the items of cost mentioned in the preceding paragraph petitioners sustained a yearly deficit in their operations (Finding 30).

24. In holding that there was an increase, during the impounding period, in petitioners expenses of operating and conducting their businesses which was not provided for in the schedule of rates prescribed in the order of June 20, 1939 (Finding 33).

25. In holding that this proceeding is no longer strictly an administrative matter under the Packers and Stockyards Act (Concl. of Law 3).

26. In holding that the burden of making a determination which would equitably support a distribution of the impounded funds and of finding petitioners' filed rates unreasonable was upon the Secretary of Agriculture and that he failed to sustain the aforesaid burden (Concl. of Law, 7, 9).

27. In holding that the petitioner market agencies are entitled to have the impounded funds restored to them (Concl. of Law 10).

28. In overruling defendants' objection to the introduction into evidence of the deposition of Henry A. Wallace taken by appellants at the former hearing in the District Court, together with the exhibits attached to such deposition (Transcript p. 30).
461 29. In overruling defendants' objection to the introduction into evidence of the testimony and exhibits introduced

in the District Court upon the examination of the witness John A. Roberts at a former hearing in this case.

30. In overruling defendants' objection to calling Henry A. Wallace as a witness at the last hearing in the District Court, to swearing him as a witness, to permitting him to be asked any questions on direct examination or requiring him to answer any questions (Transcript p. 32–33).

31. In permitting Henry A. Wallace to be questioned, and in requiring him to answer, over defendants' objections, as to whether or not he had read and examined certain evidence and exhibits presented in the course of the administrative hearings (Transcript pp. 66, 76–77, 80–84, 87–90, 102).

32. In permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to whether or not any communications were received by him from his assistants and subordinates after the oral argument before him and prior to his issuance of the order of June 20, 1939 (Transcript pp. 66, 71, 73, 78, 87, 93, 94).

33. In requiring Henry A. Wallace to produce, and in overruling defendants' objections to the introduction in evidence of, communications received by the said Henry A. Wallace from his assistants and subordinates after the oral argument before him and prior to his issuance of the order of June 20, 1939 (Transcript pp. 67–70, 72–73, 96–98).

462 34. In permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to whether or not he read the said communications from his assistants and subordinates (Transcript pp. 70, 98).

35. In permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to whether or not, during the course of the administrative hearings and after the submission of the case on oral argument, he had conferred with the Trial Examiner whom he had appointed to receive evidence at the administrative hearings, and in requiring the said Henry A. Wallace to testify as to what communications he received from the said Trial Examiner in the course of such conferences (Transcript pp. 77–80, 84–85).

36. In permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to whether or not he had personally written or revised certain portions of the order of June 20, 1939, and in requiring the said Henry A. Wallace to testify as to who did write or revise said portions of the order (Transcript pp. 73–76, 91).

37. In permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to his mental processes in the consideration of certain factors entering

into his decision of the issues before him (Transcript pp. 88, 91, 101, 102).

38. In failing to enter such order or orders with respect to the determination of the ownership, and to the disposition,
463 of the impounded funds as were and are consistent with right and justice and with the laws of the United States.

Wherefore, defendants pray that the final order and decree of the District Court may be reversed and for such other and further relief as to the Court may seem just and proper.

THURMAN ARNOLD,
Thurman Arnold,
*Assistant Attorney General,*
WENDELL BERGE,
Wendell Berge,
HUGH B. COX,
Hugh B. Cox,
*Special Assistants to the Attorney General,*
*Solicitors for Defendants.*

This 25th day of June 1940.

Service of the foregoing Assignment of Errors and the receipt of a copy thereof are hereby acknowledged this 25 day of June 1940.

FREDERICK H. WOOD,
Frederick H. Wood,
JOHN B. GAGE,
John B. Gage,
*Solicitors for Petitioners.*

[File endorsement omitted.]

464 In United States District Court

*Order allowing appeal*

June 25, 1940

In the above-entitled cause the United States of America and the Secretary of Agriculture, defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order and decree of this Court in this cause entered on the 29th day of May 1940, which set aside the order of the Secretary of Agriculture of June 20, 1939, and granted petitioners' motion for the restitution of all impounded funds theretofore deposited by them with the Clerk of this Court between July 22, 1933, and November 1, 1937, pursuant to the terms of a temporary restraining order issued by this

Court on July 22, 1933, and extended from time to time thereafter, and having also made and filed an Assignment of Errors and a Statement of Jurisdiction and having in all respects conformed to the statutes and rules of court in such cases made and provided, it is

Ordered and decreed that the appeal be, and the same is, hereby allowed as prayed for.

ARBA S. VAN VALKENBURGH,
Arba S. Van Valkenburgh,
*Judge of the Circuit Court.*
ALBERT L. REEVES,
Albert L. Reeves,
*Judge of the District Court.*
MERRILL E. OTIS,
Merrill E. Otis,
*Judge of the District Court.*

This 25th day of June 1940.

466 In United States District Court

*Notice to the Attorney General of the State of Missouri*

Filed June 25, 1940

*To the Honorable the Attorney General of the State of Missouri at Jefferson City, Missouri:*

Pursuant to the Urgent Deficiencies Act of October 22, 1913 (38 Stat. 220–221; U. S. C. Tit. 28, sec. 47a), you are hereby notified that the defendants in the above-entitled cause have taken an appeal to the Supreme Court of the United States from the final decree of the District Court of the United States for the Western District of Missouri, entered on May 29, 1940. The order allowing appeal makes the same returnable within 40 days from the date thereof.

THURMAN ARNOLD,
Thurman Arnold,
*Assistant Attorney General.*
WENDELL BERGE,
Wendell Berge,
*Special Assistant to the Attorney General,*
*For the United States of America.*

This 22 day of June 1940.

467 Service of the foregoing Notice and the receipt of a copy thereof are hereby acknowledged this 24th day of June 1940.

ROY MCKITTRICK,
Roy McKittrick,
*Attorney General, State of Missouri.*
By LAWRENCE L. BRADLEY, *Asst.*

[File endorsement omitted.]

468 In United States District Court

*Stipulation as to transmitting original documents*

Filed July 3, 1940

It is hereby stipulated and agreed by and between the parties hereto that the exhibits introduced in evidence in the several hearings before the Examiner of the Department of Agriculture, those presented to the Secretary of Agriculture at the argument before him in the reopened proceedings, those introduced in evidence in the several hearings before the District Court, and those annexed to the depositions of Secretary of Agriculture Henry A. Wallace, all as described in Exhibit A attached hereto and made part hereof, shall be certified and transmitted by the Clerk of this Court to the Clerk of the Supreme Court as original papers not to be printed as part of the transcript of record on appeal; that they may be referred to by the parties in briefs and arguments to the same extent as though part of the printed
469 transcript of record; and that this Court may make such order relative to the transmittal, safekeeping, and return of such original exhibits as to it may seem proper.

FREDERICK H. WOOD,
Frederick H. Wood,
JOHN B. GAGE,
John B. Gage,
*Attorneys for Petitioners-Appellees.*

THURMAN ARNOLD,
Thurman Arnold,
*Assistant Attorney General.*
WENDELL BERGE,
Wendell Berge,
*Special Assistant to the Attorney General,*
*Attorneys for Defendants-Appellants.*

This 3rd day of July 1940.

470 *Exhibit A to stipulation*

EXHIBITS INTRODUCED IN EVIDENCE BEFORE THE EXAMINER

I. By petitioners—Appellees

A. At Prior Hearings

Ex. 1. Relation of gross commission to gross sales and purchases.

Ex. 2. Report of the Committee on Agriculture and Forestry of the U. S. Senate, in Calendar No. 1272.

Ex. 3. Market practice agreement.

Ex. 4. Letter of Mr. Legge, Chairman of Farm Board, to William Butterworth, President of The National Chamber of Commerce.

Ex. 7. Chart showing grades and classes of sheep.

Ex. 8. Chart showing progress of the Kansas City market.

Ex. 12. Mimeographed letter of the Producers Commission Association, a credit statement, and form of application for loan.

Ex. 13. Classification of different grades and qualities of hogs.

Ex. 16. Copy of market letter of the Producers Commission Association under date of December 11, 1930.

Ex. 18. Page 40 of technical bulletin of the U. S. Dept. of Agriculture, "Cooperative Marketing of Livestock in the United States by Terminal Associations."

471 Ex. 19-A-E. Commission tariffs of livestock exchanges at Baltimore, Cincinnati, Pittsburgh, Lancaster, and New York and Jersey City introduced in evidence.

Ex. 20. Bulletin No. 38 of the Bureau of Railway Economics.

Ex. 21. Market agreement used bythe Inter-Mountain Livestock Marketing Association.

Ex. 24. Copy of arbitrators' award in Dockets 11, 12, 13, and 14.

Ex. 27. Copy of letter from the Metropolitan Casualty Company.

Ex. 28. Letter to the Metropolitan Casualty Company.

Ex. 29. Description of methods and practices.

Ex. 30. Blue print map showing locations referred to in Exhibit 29.

Ex. 31. Letter addressed to chairman of the rate committee in answer to the letter addressed to the Hartford Fire Insurance Company. Letter addressed to W. B. Osborne, manager of the Hartford Fire Insurance Company attached and made part thereof.

Ex. 32. Appraisal of value of owners.

Ex. 34. Classes of cattle.

Ex. 35. Seven pages showing number of head of meat animals received by days during 1929 at Kansas City.

Ex. 36. Rail receipts and truck receipts by species, 10-year period ended in 1929.

471½ Ex. 37. Shows fluctuation in volumes of all species of meat animals 1913 to 1929. Fluctuations by species 1913 to 1929.

Ex. 38. Yearly receipts of number of head of meat animals at Kansas City market 1890 to 1930.

Ex. 39. Relative retail food prices of Kansas City, Omaha, and in the United States by months for 3 years ended December, 1929.

Ex. 40. Relative price of livestock on foot and poultry, and wholesale and retail food meats in the United States and gross yield of the Kansas City livestock and commission rates, 1913 to 1929. Agreement that either party could refer to Bulletin No. 491 of the Dept. of Labor.

Ex. 41. Carrying capacity of stock cars, 1913 to 1928, incl.

Ex. 42. Copy of material furnished by Bureau of Animal Industry.

Ex. 43. Percentage relationship between commissions paid by seller and proceeds of sale on 10 terminal markets 1924 to 1929, respectively.

Ex. 44. Comparison of yield of old and new tariffs from 1913 to 1929.

Ex. 45. Relates to level of farm wages, union wages, general wages at hourly rates, excluding agriculture, cost of living in the United States and at Kansas City, approximated gross revenue of Kansas City Livestock Commision rates for period 1913 to 1929, basing 1913 as 100%.

472 Ex. 46. Bulletin No. 491 of Bureau of Labor Statistics, showing statistics have been employed in adjudicating wage controversies.

Ex. 47. "Ratio of commissions earned to gross market value of sales and purchases made on the Kansas City market by all firms, including cooperatives, 1926 to 1929."

Ex. 48. Time study to determine difference in time required on a unit basis to handle different species of livestock arriving by rail, straight and mixed, of single and plural ownership, and trucked or driven or planted.

Ex. 49. Basis for accruing depreciation on depreciable property and amount of accrued depreciation.

Ex. 50. Summary of sundry insurance accruals other than fire insurance.

Ex. 51. Calculation of cost of fire insurance on office furniture and fixtures and equipment.

Ex. 52. Summary of invested capital.

Ex. 52-A. Affidavits as to sale of membership.

Ex. 53. Statistical study relating to unit cost of service rendered by 65 Kansas City Livestock agencies 1929.

Ex. 55. Chart 29, U. S. Dept. of Agriculture, September, 1929, "Beef Cattle Outlook Charts," represents cattle receipts at Kansas City, years 1926 and 1927; and Chart 15, same publication, represents cattle receipts at Chicago monthly, showing fluctuations in volume on the two markets.

473 Ex. 56. Graph and supporting data remarketing cost of agricultural commodities other than livestock at Kansas City.

Ex. 59. Penal sum of bonds carried by market agencies 1929.

Ex. 60. Active market agencies at Kansas City.

Ex. 61. Inactive market agencies at Kansas City.

Ex. 63. Three sheets and graph remarketing of cattle, hogs, and sheep from several states tributary to Kansas City, in relation to proportion thereof marketed at Kansas City for 11 years, 1920 to 1930. Oral argument Mr. Gage, March 27, 1931.

Ex. 200. Working papers covering Mr. Bachmann's third test of Tariff No. 3.

Ex. 204. Appraisal of the value of owners' services.

Ex. 205. Total receipts of cattle, calves, and sheep at Kansas City Stockyards, showing percentages sold and percentages of "throughs."

Ex. 206. Comparison of unit costs per head and unit revenue of Tariff No. 2 for 1931.

Ex. 207. Final cost statement recapitulating elements of operating cost, including return on investment showing unit cost per head.

Ex. 208. Sample computations—adjustments within the species costs with respect to ability to pay as measured by average gross proceeds—selling service only.

Ex. 209. Recapitulation of salary and wages expense distributed to arrival accounts.

474 Ex. 210. Consolidation of owners' and nonowners' salaries by general accounts.

Ex. 211. Distribution of owners' salaries by firms.

Ex. 212. Distribution of nonowners' salaries and wages by firms for 1931, as shown on Government questionnaires, with exceptions.

Ex. 213. Distribution of selling portion of all salaries and wages to arrival accounts on the basis of the number of head plus number of drafts.

Ex. 214. Number of head plus number of drafts for distribution of selling salaries to arrival accounts.

Ex. 215. Distribution yarding (selling) portion of all salaries and wages to arrival accounts on basis of the number of drafts.

Ex. 216. Distribution of total yarding salaries to selling and buying on basis of relative number of drafts by species.

Ex. 217. Number of drafts by species for distribution of total yarding salaries to selling and buying.

Ex. 218. Distribution of office salaries to selling and buying by species and to arrival accounts on the basis of number of account sales, purchases, and drafts, respectively.

Ex. 219. Number of drafts, excluding buying and per cents for distribution of office salaries (selling) to arrival accounts in each species.

475 Ex. 220. Number of account sales and purchases, including second and splits, and per cents for distribution of office salaries to species and to selling and buying.

Ex. 221. Distribution of B. G. & M. salaries, element "A" circulars, correspondence, etc.—selling portion only on the basis of the number of head to rail and drive-ins only.

Ex. 222. Distribution of B. G. & M. salaries, element "A," circulars, correspondence, etc., to selling and buying by species on the basis of the number of account sales and purchases.

Ex. 223. Number of account sales and account purchases, excluding seconds and splits, and per cents for distribution of B. G. & M. salaries, element "A," to selling and buying.

Ex. 224. Distribution of B. G. & M. salaries—element "B," country trips, selling service only, to rail and drive-ins only—on basis of number of head.

Ex. 225. Distribution of B. G. & M. salaries—element "B," country trips, selling service only, to species—on basis of number of account sales.

Ex. 226. Number of account sales, excluding seconds and splits, and per cents for distribution of B. G. & M. salaries—element "B" to species.

Ex. 227. Recapitulation of operating expenses (other than salaries and wages) distributed to arrival accounts.

476 Ex. 228. Distribution of B. G. & M. expense—element "A," circulars, correspondence, etc., selling portion only—on basis of B. C. & M. element "A" salaries (number of head).

Ex. 229. Distribution of B. G. & M. expense—element "B," country trips, selling services only—on basis of B. G. & M. element "B" salaries (number of head).

Ex. 230. Summary of expenses (adjusted) by general accounts.

Ex. 231. Reconciliation of expenses with Government cost study—showing additions and deductions by general accounts.

Ex. 232. Depreciation accruals, on basis of reproduction cost new, property owned and used, by livestock commission agencies, Kansas City market, 1931.

Ex. 233. Distribution of risk expenses (including sundry insurance) to arrival accounts.

Ex. 234. Reconciliation of risk expenses with Government cost study, showing additions, deductions, and eliminations.

Ex. 235. Reconciliation of risk expense with Government-cost study, showing accounting for difference.

Ex. 236. Public liability insurance.

Ex. 237. Workmen's compensation liability insurance.

Ex. 238. Mortgage and theft insurance.

Ex. 239. Invested capital—summary, and equivalent of 8% annual return thereon.

Ex. 240. Invested capital—sound value (reproduction cost new less depreciation) of physical property owned and used.

477 Ex. 241. Invested capital—investment in materials and supplies (excluding feed) as per Government audits, Exhibit A & B.

Ex. 242. Invested capital—cash working capital for operations.

Ex. 243. Invested capital—cash working capital for sales and purchase transactions.

Ex. 244. Invested capital—investments in methods and practices employed in yard and office.

Ex. 245. Commission revenue, per head, by firms, by species, by arrival accounts—from gross revenue and number of head from P & C Exhibit, 1931.

Ex. 246. Gross commissions earned, 1931—from P & S Exhibit, pages 42–45, inc.

Ex. 247. Number of head, by firms, by species, by arrival accounts, 1931—from P & S Exhibit, pages 65–68 inclusive.

Ex. 248. Relation of Tariff No. 3 commission revenue by arrival accounts (and cattle by weight classes) to gross proceeds of sales, 1931, for 14 firms.

Ex. 249. Average gross proceeds per head by weight classes per Tariff No. 3, by firms—cattle and calves only.

Ex. 250. Relation of selling commission revenue under prevailing Tariff No. 3 to gross proceeds of sales, by species, year 1931, for 16 firms.

478 Ex. 251. Comparison of actual revenue earned in 1931 under Tariff No. 2 with revenue which would have been earned, with same volume had Tariff No. 3 been in effect—selling service.

Ex. 252. Tariff No. 3 commission revenue on relative basis, respondents' service costs, including return on investment, and profit or loss for 59 firms collectively—1931.

Ex. 253. Apportionment of arrival account costs (per respondents' Exhibit 207) to weight classes—cattle and calves—selling service only.

Ex. 254. Cattle and Calves only—analysis of commission revenue resulting from the application of Tariff No. 3 to 1931 volume by arrival accounts, eight classes and elements of charge.

Ex. 255. Comparison of elements and conciliation of differences between respondents' cost study and the Bachmann cost study.

Ex. 256. Drovers' Journal Yearbook, 1931.

Ex. 257. Supplements' Exhibits 19–A to 19–E, inclusive, which were copies of tariffs effective at other markets and introduced at the previous hearing.

Ex. 258. Compilation of gross proceeds of purchases and sale of livestock for the year 1931 by the market agencies at the Kansas City market, as contained in the annual reports of the market agencies filed with the Secretary of Agriculture pursuant to the provisions of the Packers and Stockyards Act.

479 B. At Reopened Hearing

Ex. A–1. Driven-in receipts of livestock 1937.

Ex. A–2. Livestock, Meats, and Wool-Market Statistics & Related Data, 1936.

Ex. A–3. Livestock, Meats, and Wool-Market Statistics & Related Data, 1937.

Ex. A–4. Comparative Statement of Income & Expenses-Consolidated Statements of Receipts 1923 to 1937.

Ex. A–5. Recapitulation of Consolidated Annual Reports prepared from Statements furnished by P. & S. A. covering reporting Market Agencies operations, 1923 to 1937.

Ex. A–6. Revenue headage from consolidated annual reports statement—furnished by P. & S. A. Business trends—1928 to 1937.

Ex. A–7. Number of Market Agencies registered to sell and buy livestock on Commission at the Kansas City Stockyards.

Ex. A–8. Names of Market Agencies (selling on commission) at Kansas City as of June 30, 1937.

Ex. A–9. Names of Order Buyers on commission at Kansas City as of June 30, 1937.

Ex. A–10. "Changes in Cost of Living"—July 15, 1935; Oct. 15, 1935; Jan. 15, 1936; Apr. 15, 1936; July 15, 1936; Sept. 15, 1936; Dec. 15, 1936; Mar. 15, 1937; June 15, 1937; Sept. 15, 1937.

Ex. A–11. Business Trends.

Ex. A–12. Business Trends.

480 Ex. A–13. Comparison bargained Salaries where employee was engaged by same firm in years 1931 and 1937.

Ex. A–14. Total volume handled by 38 firms now in business comparable 1931 and 1937.

Ex. A–15. Comparison of approximate number persons employed and Salaries paid 1931 and 1937.

Ex. A–16.—Gross Value of livestock bought and sold on Kansas City, Mo., Market, 1931–1935–1936, also bond for 1935.

II. By Defendants-Appellants

A. At Prior Hearings

Ex. 1. Kansas City Live Stock Exchange Tariff No. 1, with supplements 1 to 5, inclusive, and Tariff No. 2, with supplements 1 to 3, inclusive. Also copies of supplements filed by various individual respondents.

Ex. 1–A. Certified copy of the tariff filed individually by the market agencies at Kansas City, effective January 1, 1930.

Ex. 2. Tariffs filed by order buyers at the Kansas City market.

Ex. 3. Tariff No. 1 and Supplements Nos. 1 and 2 thereto filed by the Farmers Union Livestock Commission.

Ex. 4. Tariff No. 1 and Supplement No. 1 thereto, and tariff No. 2 and Supplements Nos. 1 to 3 thereto, filed by the Producers Commission Association.

481 Ex. 5–A to 5–J. Tariffs of Market agencies at St. Joseph, Denver, Wichita, Chicago, National Stock Yards, Sioux City, Fort Worth, and Oklahoma City, and the Secretary's order in Docket No. 143.

Ex. 100–A. Copy of order of Secretary of Agriculture of May 18, 1932.

Ex. 101. Tariffs filed by Market agencies, other than order buyers and cooperatives, since previous hearing.

Ex. 102. Tariffs filed by Harry Conley, W. H. Cripe, Feaman & Nolan, Graybill Stephenson, Great Western Order Buying Co., and K. L. Peterson & Co.

Ex. 103. Tariff No. 4 of Farmers Union Livestock Com. Co.

Ex. 103–A. Tariff filed by Farmers Union Livestock Com. subsequent to Tariff No. 4.

Ex. 104. Tariffs filed by the Producers Commission Assn.

Ex. 105. Tariffs filed by market agencies at those stockyards covered in Government Exhibit 5 since the previous hearing.

Ex. 9, 9–A, to 9–B. Rules and by-laws of the Kansas City Live Stock Exchange.

Ex. 109–C to E, incl. Amendments to the rules and regulations of the Kansas City Live Stock Exchange since the previous hearing.

Ex. 13–A. Car receipts for the year 1929 of the commission firms, packers, and miscellaneous receipts.

482 Ex. 13–B. Car receipts of cattle for commission firms, packers, and others by months for the year 1929.

Ex. 13–C. Same information as to hogs.

Ex. 13–D. Same information as to sheep.

Ex. 113–E. Receipts of livestock by months, by firms, of market agencies and others, during the year 1930 at the Kansas City Stock Yards.

Ex. 113–F. Same information for 1931 as shown in Ex. 113–A.

Ex. 113–G. Same information for months from January to August, 1932, as shown in previous exhibit.

Ex. 14, 1–86 (4 vol.). Audits of the individual respondent firms.

Ex. 114–1 to 107. Individual audits of respondent commission firms.

Ex. 114–8. Audit of McDonald Livestock Commission Company.

Ex. 15. Bachman's cost study.

Ex. 115. Cost study prepared by Government auditor.

Ex. 115–A. Differential study of operations, income and cost.

Ex. 115–B. Questionnaire.

Ex. 16. Compilation of receipts of livestock at the Kansas City Stockyards by days, weeks, and months for the year 1929 and January to June, inclusive, for the year 1930.

Compilation showing total direct hogs passing through the Kansas City Market, the number of hogs going to the Mistletoe Stockyards, and the total hogs going to the packers outside of the yard.

Ex. 116. Receipts of livestock at Kansas City Stockyards by days, weeks and months, years 1930, 1931, and January to September 1932.

483 Ex. 16–B. Analysis of direct cost by months for 1929.

Ex. 17, 17–A. Compilation showing purchases of cattle, calves, hogs, and sheep by packers and butchers for the year 1929, and the first six months for 1930.

Ex. 18. Compilation showing livestock held over in the Kansas City Stockyards by days, weeks and months for the year 1929 and the first 6 months of 1930.

Ex. 19. Compilation showing the disposition of livestock received at the Kansas City Stockyards.

Ex. 20–A–B–C. Compilation showing number of cattle, calves, hogs and sheep, respectively, weighed at the Kansas City Stockyards during the year 1929.

Ex. 21. Compilation showing the animals slaughtered under Federal meat inspection at Kansas City, Mo., for the years 1919 to 1929, inc.

Ex. 121. Animals slaughtered under Federal Meat Inspection, Kansas City, Mo., covering years 1930, 1931, and January to September 1932.

Ex. 116–A & B. Kansas City Livestock Market, direct hogs.

Ex. 117 & 117–A. Daily purchases of cattle, packers, and butchers, for year 1930.

Ex. 118. Livestock held over, Kansas City Stockyards, for the years 1930, 1931, and January to September 1932.

Ex. 120–A–B–C. Livestock weighed at the Kansas City Stockyards covering the years 1930, 1931, and January to September 1932.

484 Ex. 22. Description of trade territory.

Ex. 122. Study by States of livestock population for years 1920 to 1932, inc.

Ex. 23–A–B–C. Maps, Chicago trade territory.

Ex. 24–A–B–C. Maps, Omaha trade territory.

Ex. 25–A–B–C. Maps, National Stock Yards trade territory.

Ex. 26. Compilation of figures for all 10 markets, such as included in Gov't. Exhibit 22 for Kansas City.

Ex. 29. Advertisement in the Kansas City Star relative to the Kansas City Stockyards.

Ex. 32. Number of head of different species arriving at Kansas City on a per-car basis for years 1920 to 1930, inclusive.

Ex. 34. Actual losses from all sources of respondent market agencies during 1929.

Ex. 36. Amplification of Roberts' time study.

Ex. 138. Stebbins' work sheets showing type of form used for testing Tariff No. 3.

EXHIBITS PRESENTED TO THE SECRETARY AT ORAL ARGUMENT IN REOPENED PROCEEDING

I. By Petitioners-Appellees

1. Exhibit showing comparison of number of agencies and selling volumes at five stockyards in 1931, 1933, and 1937.

2. Exhibit showing comparison of number of agencies and of selling and buying volumes of all markets in 1931, 1933, 1936, and 1937.

485 3. Exhibits showing comparative charges on a five-head consignment of cattle and calves under different tariff schedules.

II. By Defendants-Appellants

1. Exhibit showing index of monthly receipts in 1931 of cattle and calves at Kansas City Stockyards and index by months of the number of employee and owner cattle and calf salesmen for the same period.

EXHIBITS INTRODUCED IN EVIDENCE IN THE DISTRICT COURT

## I. By Petitioners-Appellees

### A. At Prior Hearings

Ex. 1. Schedule comparing the revenue yield of rates prescribed in order of June 14, 1933, and those set forth in preceding tariffs, Nos. 2 and 3 respectively, as reflected by applying the prescribed rates to transactions actually handled throughout the year 1931 by 57 market agencies remaining active at end of that year.

Ex. 2. Analysis of selling commission revenue derived from application of Secretary's Order (June 14, 1933), schedule of rates to 1931 volume of petitioner agencies. (Kansas City Market.)

Ex. 3. Comparison of gross selling and buying commission revenues, first 5 months, 1932 and 1933, as per showing by agencies' books (all species).

Ex. 4. B. A. I. Docket No. 311, order of June 14, 1933—
486 confiscatory aspect of the prescribed rates, by species, showing net amounts available to compensate owners for services rendered, on basis of Government costs—comparative revenue yield of the prescribed rates determined by applying same to the volume handled by individual firms in 1931.

Ex. 5. Nine firms handling 42% of 1931 volume (equivalent carlot basis)—net returns to owners under rates of June 1933, order based on revenue test using 1931 volume and costs of that year—selling and buying service, all species.

Ex. 6. 21 firms handling 72.5% of 1931 volume (equivalent carlot basis)—net returns to owners under rates of June 1933, order based on revenue test using 1931 volume and costs of that year—selling and buying service, all species.

Ex. 7. Comparison of so-called "reasonable" unit-costs per order of June 14, 1933, and total costs as found by Government accountants and as claimed by respondents (59 agencies) for the test year 1931.

Ex. 8. Comparisons of Secretary's costs allowances, and such allowances equated to reflect revenue yield, with experienced costs of 1931 for 9 petitioner agencies which handled 42% of volume (exclusive of that handled by cooperative agencies) being those petitioner agencies handling the largest volume as shown at Page 39 of order, to-wit: Nos. 46, 51, 54, 59, 63, 73, 82, 83, 84.

487 Ex. 9. Memorandum comparing the Secretary's required performance in selling and buying with actual performance—1931.

Ex. 10. Business getting and maintenance costs—1931—59 agencies, Kansas City Market—analysis of amounts so classified by Government and by petitioner agencies.

Ex. 11. Charts showing trend of beneficial effects of agencies' country auxiliary selling service on customers' sales proceeds from yearlings and fat cattle, Kansas City Market, 1931.

Ex. 12. Comparison of unit costs for selling and buying services combined—petitioner agencies costs as Government accountants costs for 9 agencies handling 42%, and 21 agencies handling 74% of volume on equivalent car-lot basis, and for 59 petitioner agencies, Kansas City Market, year 1931.

Ex. 13. B. A. I. Docket No. 311—confiscatory aspects of the June 14, 1933, order's rates, as to the 11 leading firms and as to the 23 leading firms per page 39 of order.

B. At Last Hearing

Ex. 1.

Ex. 2. Petitioners' Exceptions to Examiner's Report.

Ex. 3. Examiner's Report.

Ex. 4. Rules and Regulations of Secretary of Agriculture in proceedings under Packers and Stockyards Act.

Ex. 5. Clipping from New York Times.

488 (The following documents were introduced by reference to the numbers assigned to them on a list prepared by the Hearing Clerk, Department of Agriculture.)

Ex. 1x. Order of Inquiry and Notice of Hearings, dated April 7, 1930, signed by Arthur M. Hyde, Secretary of Agriculture.

Ex. 2x. Transcript of text of first hearing, consisting of 6,722 pages and 140 exhibits.

Ex. 3x. Transcript of oral argument held at Washington, D. C., on March 27 and 28, 1931.

Ex. 4x. Proceedings, Findings of Fact, Conclusions, and Order, signed May 18, 1932, by R. W. Dunlap, Acting Secretary of Agriculture.

Ex. 7x. Order Granting Rehearing, signed by Arthur M. Hyde, Secretary of Agriculture, dated July 15, 1932.

Ex. 8x. Transcript of second hearing containing 3,091 pages and 187 exhibits.

Ex. 9x. Transcript of oral argument held at Washington, D. C., March 24, 1933.

Ex. 12x. Copy of order entered July 8, 1933, by Henry A. Wallace denying petitions and extending effective date of order of June 14, 1933, for 10 days.

489 Ex. 17x. Tentative Findings of Fact, Conclusion and Proposed Order of the Secretary served upon respondents

in accordance with the Order Reopening Proceeding, signed by the Secretary June 2, 1938.

Ex. 24x. Statement objecting to Procedure and Rulings of Examiner.

Ex. 25x. Exceptions of Certain Respondents to Purported Tentative Findings of Fact, together with two documents marked "Attachments."

Ex. 26x. Brief in United States Supreme Court, October Term, 1937.

Ex. 27x. Exhibit attached thereto.

Ex. 30x. Transcript of Third Hearing, containing 831 pages, Respondents' Exhibits A1 to A16, inclusive, Government Exhibits B1 to B31, inclusive, and Examiner's Exhibits 1, 2, and 3.

Ex. 34x. Proposed Findings of Fact and Proposed Order submitted by counsel for Government, dated December 27, 1938.

Ex. 35x. Proposed Findings of Fact submitted by respondents, not dated, but filed December 28, 1938.

Ex. 36x. Report and Recommendation of the Examiner dated January 17, 1939, filed by John C. Brooke.

490 Ex. 37x. Letter dated January 28, 1939, from John B. Gage to Mastin G. White, Solicitor, requesting 10 days additional time for filing exceptions to the Examiner's Report.

Ex. 38x. Letter dated Feb. 1, 1939, to John B. Gage from Mastin G. White, Solicitor, granting 10 days extension.

Ex. 43x. Exceptions to Examiner's Tentative Findings of Fact and Tentative Order, and General Statement, dated Feb. 15, 1939, filed by counsel for the Government.

Ex. 55x. Transcript of oral argument before Secretary Wallace on March 29, 1939.

EXHIBITS ANNEXED TO DEPOSITIONS OF SECRETARY OF AGRICULTURE HENRY A. WALLACE

Ex. A. Transcript of stenographic minutes of the oral argument held at Washington, D. C., March 24, 1933, in B. A. I. Docket No. 311.

Ex. B. Brief of Respondents in B. A. I. Docket No. 311.

Ex. C. Supplemental Brief of Respondents on rehearing in B. A. I. Docket No. 311.

Ex. D. Abstract of that part of testimony dealing with the structure of the tariff in B. A. I. Docket No. 311.

Ex. E. Photostatic copy of letter dated June 2, 1933, addressed to the solicitor and signed by J. R. Mohler.

491 Ex. F. Photostatic copy of memorandum dated June 8, entitled "Memorandum for the Secretary," signed by Seth Thomas.

Ex. G. Proceedings, Findings of Fact, Conclusion and Order in B. A. I. Docket No. 311.

Ex. H. Tentative findings and order in B. A. I. Docket No. 311.

NOTE.—Exhibit K annexed to depositions is a carbon of Government Ex. 115, included elsewhere, and is not to be included in exhibits transmitted.

TESTIMONY TAKEN IN CONNECTION WITH PRIOR HEARINGS IN THE DISTRICT COURT

1. Transcript of the testimony given by J. W. Roberts before the District Court on February 27, 1934.

2. Deposition of Henry A. Wallace, Secretary of Agriculture, taken on behalf of defendants at Washington, D. C., on April 22 and 23, 1937.

[File endorsement omitted.]

492 In United States District Court

*Praecipe for Transcript of Record*

Filed July 3, 1940

*To the Clerk of the United States District Court:*

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript, in the order given below, the following papers, viz:

493 1. Petition in Cause No. 2328. Exhibit A—Proceedings before the Secretary of Agriculture, Findings of Fact, Conclusion, and Order issued June 14, 1933. Exhibit B—Petition for reinvestigation and rehearing. Exhibit C—Tables.

2. Statement as to petitions in Causes Nos. 2329 to 2378, inclusive (see Exhibit C).

3. Temporary restraining order, dated July 22, 1933.

4. Order continuing in force temporary restraining order, dated September 19, 1933.

5. Defendants' answer to said petitions, dated November 25, 1933.

6. Decree of December 20, 1934.

7. Petition for rehearing (Appendix omitted).

8. Order granting leave to file petition for rehearing.

9. Stipulation as to consolidation.

10. Order consolidating causes.

11. Order denying petitions for rehearing and entering joint and final decree, dated June 20, 1935.

12. Mandate of Supreme Court, dated June 2, 1936.

13. Supplemental answer, filed July 11, 1936.

14. Amended application of petitioners for leave to amend petitions.

15. Order dated November 6, 1936 granting leave to amend petitions.

16. Answer to petitions as amended, dated December 4, 1936.

17. Decree of July 9, 1937.

18. Order continuing temporary restraining order, filed August 16, 1937.

19. Stipulation and Modification of Order of June 14, 1933, signed October 14, 1937, by Henry A. Wallace.

20. Modification of Order of June 14, 1933, signed November 13, 1937, by Henry A. Wallace.

494 21. Modification of Order of June 14, 1933, signed November 19, 1937, by Henry A. Wallace.

22. Mandate of Supreme Court dated June 3, 1938.

23. Motion for order staying distribution of impounded funds, filed June 7, 1938. Exhibit A—Order Reopening Proceedings, dated June 2, 1938, signed by Henry A. Wallace.

24. Reply to motion for order staying distribution of impounded funds.

25. Answer of New Amsterdam Casualty Company to motion for order staying distribution of impounded funds.

26. Petition for restitution of impounded funds, filed June 11, 1938.

27. Order on petition for restitution, filed June 18, 1938.

28. Decree of June 18, 1938.

29. Mandate of Supreme Court dated June 10, 1939.

30. Motion for order to show cause. Exhibit A—Findings of Fact, Conclusion, and Order issued by the Secretary of Agriculture on June 20, 1939.

31. Order granting motion for order to show cause.

32. Joint and several return of petitioners to order to show cause.

33. Separate return of New Amsterdam Casualty Company to order to show cause.

34. Notice to take depositions of Henry A. Wallace upon oral examination.

35. Motion to strike portions of joint and several return of petitioners to order to show cause.

36. Motion for order that deposition of Henry A. Wallace not be taken or in alternative that deposition be taken by written interrogatories.

37. Ruling of District Court on motion that depositions not be taken and motion to strike portions of return.

495 38. Answer to joint and several return to order to show cause.

39. Answer to separate return of New Amsterdam Casualty Company to order to show cause.

40. Motion for order directing Secretary of Agriculture to produce and file record and granting right of inspection.

41. Ruling on motion for production and inspection.

42. Narrative statement of evidence in hearing on order to show cause.

43. Order approving narrative statement of evidence.

44. Stipulation re transmitting original exhibits. Exhibit A—Descriptive list of exhibits.

45. Decree of May 29, 1940.

46. Findings and conclusions, filed May 29, 1940.

47. Supplemental findings and conclusions.

48. Petitioners' request for findings and conclusions.

49. Defendants' objections to petitioners' request for findings and conclusions and defendants' request for additional findings and conclusions.

50. Petitioners' reply to defendants' objections to petitioners' proposed findings and conclusions, and request for additional findings.

51. Petition for appeal.

52. Assignment of errors and prayer for reversal.

53. Notice of appeal.

54. Order allowing appeal.

55. Notice to Attorney General of the State of Missouri.

56. Motion for stay of final order and decree.

57. Order allowing stay.

58. Praecipe for transcript.

62. Opinion, Otis, J. (July 2, 1937).

496 60. Concurring opinion, Van Valkenburgh, J.

61. Opinion on petition for rehearing, Van Valkenburgh, J. (June 20, 1935).

62. Opinion, Otis, J. (July 2, 1937).

63. Dissenting opinion, Van Valkenburgh, J.

64. Opinion, per curiam (June 18, 1938).

65. Opinion, Van Valkenburgh, J. (April 9, 1940).

66. Concurring opinion, Reeves, J.

67. Dissenting opinion, Otis, J.

THURMAN ARNOLD,
*Assistant Attorney General.*
WENDELL BERGE,
*Special Assistant to Attorney General.*

This 3rd day of June 1940.

Service of the foregoing Praecipe for Transcript of Record and the receipt of a copy thereof are hereby acknowledged this 3rd day of July 1940.

FREDERICK H. WOOD,
Frederick H. Wood,
JOHN B. GAGE,
John B. Gage,
*Solicitors for Petitioners.*

[File endorsement omitted.]

497 In United States District Court

*Narrative statement of evidence in hearing on order to show cause*

Filed Aug. 23, 1940

Transcript in narrative form of the proceedings and evidence upon the hearing in the above-entitled matter on January 9, 1940, before Honorable Arba S. Van Valkenburgh, Honorable Merrill E. Otis, and Honorable Albert L. Reeves sitting as three-judge court, at Kansas City, Jackson County, Missouri.

*Appearances*

For the Petitioners: Mr. John B. Gage, Mr. Thomas Cooke, Mr. Carson E. Cowherd, and Mr. Douglas Stripp.

For the Defendants: Mr. Wendell Berge, Mr. Hugh B. Cox, and Mr. James C. Wilson.

498 The COURT (VAN VALKENBURGH, J.). Gentlemen, are you prepared to proceed in this case of Morgan versus United States?

Mr. BERGE. Yes; your Honor.

*Offers in evidence*

Mr. GAGE. Petitioners offer in evidence the following documents and other papers:

"Order of Inquiry and Notice of Hearing," dated April 7, 1930, signed by Arthur M. Hyde, Secretary of Agriculture.

Transcript of the text of the first hearing, consisting of 6,722 pages and 140 exhibits.

Transcript of the oral argument held at Washington, D. C., on March 27 and 28, 1931.

"Proceedings, Findings of Fact, Conclusions and Order," signed May 18, 1932, by R. W. Dunlap, Acting Secretary of Agriculture.

"Order Granting Rehearing," signed by Arthur M. Hyde, Secretary of Agriculture, dated July 15, 1932.

Transcript of second hearing containing 3,081 pages and 187 exhibits.

Transcript of oral argument held at Washington, D. C., March 24, 1933.

"Order" dated June 14, 1933, signed by Henry A. Wallace, prescribing reasonable rates.

Copy of order entered July 8, 1933, by Secretary Henry A. Wallace denying the petitions of all the respondents and extending the effective date of the order of June 14, 1933, for a period of 10 days.

"Stipulation and Modification of Order," signed by H. A. Wallace, October 14, 1937.

"Modification of Order" of June 14, 1933, signed November 13, 1937, by H. A. Wallace.

"Modification of Order" of June 14, 1933, dated November 19, 1937, and signed by H. A. Wallace.

"Order Reopening Proceedings," dated June 2, 1938, signed by H. A. Wallace, Secretary of Agriculture.

"Tentative Findings of Fact, Conclusion and Proposed Order" of the Secretary, served upon respondents in accordance with "Order Reopening Proceeding" signed by the Secretary June 2, 1938.

"Respondents' Motions and Objections with Respect to Order of Secretary of Agriculture dated June 2, 1938, Purport-
499 porting to Reopen Proceeding," dated June 30, 1938, filed by Frederick H. Wood and John B. Gage, attorneys for respondents.

"Affidavit of Bias and Prejudice," dated August 12, 1938, filed by John B. Gage.

"Affidavit as to Changed Conditions Since Closing of Evidence," dated August 13, 1938, filed by John B. Gage.

"Statement Objecting to Procedure and Rulings of Examiner," not dated but received August 15, 1938, filed by Frederick H. Wood and John B. Gage.

"Exceptions of Certain Respondents to Purported Tentative Findings of Fact," not dated but received August 15, 1938, filed by Frederick H. Wood and John B. Gage, together with two documents each marked "Attachment to Respondents' Exceptions Filed August 15, 1938," referred to on page 43 of "Exceptions of Certain Respondents to Purported Tentative Findings of Fact."

"Brief in United States Supreme Court," October Term, 1937. Exhibit attached thereto.

"Order for Taking Additional Evidence," dated August 26, 1938, signed by H. A. Wallace, Secretary of Agriculture.

"Opinion on Motions," dated August 26, 1938, signed by H. A. Wallace, Secretary of Agriculture.

"Transcript of Third Hearing," containing 831 pages, Respondents' Exhibits A1 to A16, inclusive, Government Exhibits B1 to B31, inclusive, and Examiner's Exhibits 1, 2, and 3.

Letter to John B. Gage, Esq., dated October 31, 1938, requesting the submission to the Examiner of proposed findings of fact and proposed order on the complete record.

Letter to Challen B. Ellis, Esq., making same request.

Letter to G. N. Dagger, Esq., making same request.

"Proposed Findings of Fact and Proposed Order Submitted by Counsel for the Government," dated December 27, 1938, filed by G. N. Dagger.

"Proposed Findings of Fact," not dated but received on December 28, 1938, filed by Frederick H. Wood, John B. Gage, and Thomas T. Cooke.

"Report and Recommendations of the Examiner," dated January 17, 1939, filed by John C. Brooke.

Letter, dated January 28, 1939, to Mastin G. White, Solicitor, from John B. Gage, requesting ten days' additional time for filing exceptions to the Examiner's report.

500 Copy of letter, dated February 1, 1939, to John B. Gage, from Mastin G. White, Solicitor, granting ten days' additional time in which to file exceptions to the Examiner's report.

"Exceptions to the Examiner's Tentative Findings of Fact and Tentative Order; and General Statement," dated February 13, 1939, filed by G. W. Dagger, Counsel for the Government.

"Motion of Respondents to Suppress the Report and Recommendations of Examiner dated January 17, 1939, and for a Rehearing," dated February 15, 1939, filed by Gage, Wood, and Cooke, counsel for certain respondents.

"Exceptions of Certain Respondents to Purported Report and Recommendations of Examiner" and "Statement Objecting to Procedure and Rulings of Examiner," not dated but received February 16, 1939, submitted by Frederick H. Wood and John B. Gage.

"Motion of Respondents to Suppress the Report and Recommendations of Examiner dated January 17, 1939, and for a Rehearing, and Memorandum in Support Thereof," dated February 17, 1939, submitted by Wood, Gage, and Cooke, counsel for certain respondents.

Copy of letter dated March 1, 1939, to Frederick H. Wood, signed by H. A. Wallace, Secretary of Agriculture, informing

him that motion made by Mr. Gage to suppress the report and recommendations of the Examiner and for a rehearing have been considered and an order disposing of that motion has been prepared. Motion filed by Mr. Wood is similar and, as an opportunity to argue these questions will be afforded, the present motion should not now be entertained.

"Order," dated March 4, 1939, signed by H. A. Wallace, Secretary of Agriculture, denying motion to Respondents to suppress the report and recommendations of Examiner dated January 17, 1939, and for a rehearing.

Copy of letter, dated March 15, 1939, to John B. Gage, signed by H. A. Wallace, Secretary of Agriculture, advising him that oral argument will be heard on March 29, 1939, between 10 a. m. and 1 p. m.

Letter, dated March 17, 1939, to H. A. Wallace, signed by John B. Gage, requesting additional time for oral argument.

Copy of telegram, dated March 22, 1939, to John B. Gage, signed by Mastin G. White, Solicitor, notifying that Secretary will allow four hours for argument of the case, beginning at 8:30 a. m.

Oral argument before Secretary Wallace on March 29, 1939.

501 The COURT. Is there any objection to the offer of any one of these documents now offered?

Mr. STRIPP. If the Court please, on behalf of the New Amsterdam Casualty Company, which is substituted for one of the original petitioners, Harry Kennalley, we would like to offer:

"Special Appearances of New Amsterdam Casualty Company and Motion to Quash and Vacate the Order of the Secretary of Agriculture, dated June 2, 1938, Purporting to Reopen Proceeding," dated August 13, 1938, filed by attorneys for New Amsterdam Casualty Company.

"Exceptions of New Amsterdam Casualty Company to 'Order Reopening Proceeding,' dated June 2, 1938, and 'Tentative Findings of Fact, Conclusions and Proposed Order'," dated August 13, 1938, filed by attorneys for New Amsterdam Casualty Company.

The COURT. Is there any objection to that offer?

Mr. COX. May it please the Court we object to the offer of the brief in the United States Supreme Court October Term, 1937, and the exhibit attached thereto.

The COURT. Are those your only objections?

Mr. COX. Those are the only objections.

The COURT. What do you say about those, Mr. Gage?

Mr. GAGE. Those were attached as exhibits to our exceptions to the report of the examiner. They are also referred to in the Order of the Secretary and are attached to the motion.

The COURT. The objection is overruled.

Mr. COX. May I ask, may it please the Court then that the brief and the attachment be accepted merely as evidence of the fact that they were attached to the examiner's report and their contents are as shown in the document and not as proof of anything else?

The COURT. They will be received for what purposes they may be competent to serve.

Mr. GAGE. We also offer in evidence the testimony, cross examination and exhibits offered, and introduced in this Court
502 at a former hearing in this matter by the witness John A. Roberts.

Mr. COX. We object to the offer.

The COURT. We cannot rule on that until we know what the offer is a little more definitely than has been stated.

Mr. GAGE. If the Court please, it will recall that the witness Roberts, appearing here in this Court at the time the validity of the former Order was first under consideration, gave his testimony as an accountant as to the effect of these rates upon revenue in the test year, 1931, that being ascertained on the basis of matters that were introduced in evidence during the trial, at the first trial. Now, his calculation is referred to herein, incorrectly applied, however, as representing the yield of these rates, these being identical with the rates that he applied and that all appears on page 99 of the Order that is attached to the motion.

The COURT. Overruled.

Mr. GAGE. We also offer in evidence the deposition of Henry A. Wallace taken by respondents in this proceeding at the former hearing, together with the exhibits attached to such deposition which he identified and which were then offered in evidence.

The COURT. Were they received in evidence then?

Mr. GAGE. They were received in evidence and are a part of the record upon the former appeal to the Supreme Court.

Mr. COX. We object to that.

The COURT. Overruled.

Mr. GAGE. We call Mr. Secretary Wallace, if the Court please, as a witness.

The COURT. Come forward, if he is here.

*Statement by Mr. Berge*

Mr. BERGE. May it please the Court, I would like to make, for the record, a brief statement of our position in regard to the Secretary's appearance here. At the hearing last October 25th I appeared in support of the Government's motion for an Order that the depositions of the Secretary not be taken for the reason, among others, that the pleadings in this cause do not properly raise any issues concerning which Petitioners are entitled to examine Secretary Wallace. After full argument this Court denied our motion. Thereupon, as the record shows, I suggested that rather than have the deposition taken in Washington we would prefer to have the Secretary appear before the Court. The suggestion seemed to be acceptable to the Court as it was announced from the bench that the order would be that the Secretary appear or Petitioners could take his deposition. It was of course, plain that in suggesting a workable procedure to accomplish the object of the Court's ruling I was not waiving any of the objections which I had urged in support of our motion. The record must be perfectly clear that the appearance of Secretary Wallace before the Court, as an alternative to having his deposition taken, is in no sense a waiver of our position, urged in support of our motion that no issues have been raised on which, as a matter of law, the Secretary can properly be examined.

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In order to protect our position in this respect, I desire at this time to enter on behalf of defendants an objection to calling Secretary Wallace as a witness, to swearing him as a witness, to asking him any questions on direct examination or requiring his answer to any questions. The grounds of the objection are that as to each and all of the issues raised by the Petitioners' Return there exists in behalf of the Secretary an absolute privilege against being compelled to give testimony, hence it is beyond the jurisdiction, power, and province of this Court to direct or require testimony to be given by him. On the face of the record, for this Court to require Henry A. Wallace to testify as to any of the issues now sought to be raised by Petitioners would be an unconstitutional invasion of the rights and privileges of Henry A. Wallace as an executive officer of a separate, coordinate, and independent branch of the Government; would constitute an attempt to examine the mental processes of Henry A. Wallace, as Secretary of Agriculture, with respect to quasi-legislative determinations made by him under authority delegated by the Congress of the United States; and would be beyond the power of this Court because such testimony would relate to official, confidential, and privileged matters and com-

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pulsory disclosure of such matters would be contrary to the public interest and would constitute an obstruction to and interference with Henry A. Wallace, as Secretary of Agriculture, in the performance of his official duties.

The COURT. I think I can speak for the Court in a preliminary way. We do not know of course, whether any question which may be asked the Secretary of Agriculture will be such a question as he will be required to answer. That is a matter that will be decided when it arises but he is in the court room, he has been called as a witness. There is no reason why one citizen any more than any other citizen of the United States should not be a witness on any controversy. Let the witness be sworn.

* * * * *

HENRY A. WALLACE, of lawful age, being produced, sworn, and examined as a witness on behalf of the Petitioners, testified as follows:

Direct examination by Mr. GAGE:

Q. Mr. Wallace, will you give your address for the record?

A. My Washington address is the Wardman Park Hotel.

Q. What official position do you hold?

505 A. Secretary of Agriculture.

Q. How long have you been Secretary of Agriculture of the United States?

A. Since March 4, 1933.

Q. Have you, as such Secretary of Agriculture, had to do or heard of a proceeding known as Bureau of Animal Industry Docket No. 311 under the Packers and Stockyards Act, 1921, having to do with the rates and charges of market agencies at the Kansas City Stockyards?

A. I have.

Q. Did you, on or about the 20th day of June, 1939, sign the order which I now hand you in that proceeding?

Mr. Cox. Before Mr. Gage goes any further I wonder whether we can reach some agreement with him so it will be unnecessary for me to object to each and every one of his questions. Will you agree, Mr. Gage, that the record will stand as if I had objected to each and every one of your questions, I shall not enter that formal objection but shall save my objections for situations where there are peculiar grounds either as to relevancy or form of question?

The COURT. Of course, the Court desires to consider any vital question and does not want to rule erroneously.

Mr. Cox. I appreciate that and I will state my grounds when they are other than what Mr. Berge has already stated but I take it as to that the record may stand?

The COURT. You desire the record to show you object to everything?

Mr. COX. That is right.

Q. Mr. Wallace, did you on or about the 20th day of June 1939, sign this order which I now hand you, it being a certified
506 copy of the order that is attached to your motion filed herein?

A. I did.

Q. Did you, on the 29th day of March 1939, hear an oral argument in that proceeding upon exceptions to a report and recommendations of an examiner, which I, for the purpose of identification, it already having been offered in evidence, have had identified as Petitioners' Exhibit 2?

A. You are asking if I hear the oral argument on March 29th?

Q. Yes, to the exceptions to a report and recommendations of the examiner, copy of which, as filed with you, I have handed you?

A. Yes, I heard the oral argument. I might say that there appears in the record so far a slight error with regard to that oral argument. I do not know whether you would care to have it corrected or not.

Q. Will you correct it, Mr. Wallace; I have no objection.

A. I happen to remember the situation very well. We began the arguments at 8:30 in the morning and continued until 1:00 o'clock and I think counsel on both sides have indicated a shorter period of argument than the actual period.

Q. Mr. Wallace, did I not write you a letter stating that it would be necessary that I have two days to argue this case to familiarize you with the record in view of what had transpired?

Mr. COX. I object to that question; if he wrote him a letter it is in evidence.

Mr. GAGE. I move then to strike out the answer of the witness. The letter is here, at least that part of it which states that counsel had been given a longer time.

The COURT. All the witness has said is that he thinks the oral argument was a little longer than was stated in the opening
507 statement, thirty minutes longer, and he made that answer in response to your request that he state what he had in mind. Overruled.

(Report and recommendations of examiner marked "Petitioners' Exhibit 3" for identification.)

Q. Was the examiner, John C. Brooke, who signed the report, and recommendations of the examiner, identified as Petitioners' Exhibit 3, the same trial examiner who had acted in the proceedings prior to the order of June 15, 1933?

A. He was.

Q. At the time of his original designation as examiner was he a member of the Solicitor's Department of the Department of Agriculture?

A. I was not Secretary of Agriculture at that time.

Q. Did he occupy that position and was he a member of that staff at the time you appointed him, in your order of August 26, 1938?

A. Yes.

Q. Mr. Wallace, you referred, in your order of August 26, 1938, to refresh your recollection, I believe to the promulgation of certain rules of practice under the Packers and Stockyards Act effective September 28, 1936, made subsequent to the first decision of the Supreme Court in the Morgan case. Under those rules did you require that as one document, exceptions be filed to the tentative report of the examiner and as another, objections to his rulings and procedure prior to the making of the report?

(Rules and Regulations of Secretary of Agriculture marked "Petitioners' Exhibit 4" for identification and having been offered in evidence are hereby made a part of the record.)

Q. Will you state, Mr. Wallace, whether pursuant to these rules, exceptions were filed to the report of the examiner?

A. They were.

508 Q. And whether pursuant to these rules objections were filed to the rulings and procedure of the examiner?

A. They were.

Q. Referring now to the order which has been identified — I believe you have it in your hand ——

A. (Interrupting.) You are referring to Exhibit No. 1?

Q. Yes. I will ask you to point out where, if at all, you have made any ruling upon the objections to the procedure and rulings of the examiner?

Mr. Cox. I object to that. The documents will speak for itself and show what it contains. I do not think the Secretary should be asked to point to anything by a question which really calls for a conclusion as to whether or not he overruled something.

The Court. If the document does show a ruling of course that objection is well taken. If your point is that it does not show any ruling at all perhaps the point is not well taken.

Mr. Gage. Our point is that it shows no ruling upon the objections.

The Court. Well, it shows it for itself, then. The objection is sustained on the ground that the document shows on its face that there were no rulings, recorded none.

Q. Did you issue any order subsequent to the oral argument on March 29, 1939, which contained rulings on the objections?

A. None except the order itself, which was signed June 20th.

Q. In your prior order of August 26, 1938, Mr. Wallace, you said that "The respondents base their charge of bias and
509 prejudice upon certain statements made by me shortly after the decision of the Supreme Court on the second appeal on April 25th last and they assert those statements indicate that I have prejudiced the case against them." Among the statements that you referred to I will ask you if you referred to a letter which you had written to the New York Times under date of May 8th, 1938?

A. Yes; I made reference to that.

(Newspaper clipping marked "Petitioners' Exhibit 5" for identification.)

Mr. Cox. I must ask the witness not to answer questions that are not competent. I object to this line of questioning on the ground that the letter to which Mr. Gage is referring is now in evidence and was introduced in the list of documents which he has attached to an affidavit, in the list of documents which he introduced.

The Court. The letter is not now offered in evidence. The question which was asked the witness was whether he referred to the letter.

Mr. Cox. I am about to say that the letter itself is in evidence and the letter shows on its face that this inquiry into the subject of the prejudice and bias is irrelevant because the letter contains no such statements as would serve to accuse the Secretary of bias, and on that ground I object.

The Court. The objection is overruled. We are not passing of course on any serious matters that you have in mind yet but we are ruling on this objection.

(Letters marked "Petitioners' Exhibits 6 and 7" for identification.)

510 Q. Mr. Wallace, I hand you the copy of a letter, the original of which bore my signature, under date of April 1, 1939, addressed to you and I will ask you if you received that letter subsequent to the oral argument on the preceding March 29th?

A. Yes; I received this and read it.

Mr. Gage. I offer Petitioners' Exhibit 6 in evidence.

The Court. That was not in the list?

Mr. Gage. No.

The Court. Apparently there is no objection to the offer.

(Petitioners' Exhibit 6 so offered in evidence is hereby made a part of the record.)

Q. I hand you now Petitioners' Exhibit 7 which purports to be the original of a letter under date of April 14, 1939, signed by you, Mr. Wallace. Did you sign that letter, write that letter?

A. I did.

Mr. GAGE. I offer Petitioners' Exhibit 7 in evidence.

(Petitioners' Exhibit 7 so offered in evidence is hereby made a part of the record.)

Q. Mr. Wallace, if you will refer to page 16 of Exhibit 1, the order, you will note there two sentences in the middle of the paragraph 15 dd as follows: "On March 31, 1939, counsel for the respondents addressed a letter to the Secretary relative to Exhibit No. C of the respondents' brief in the Supreme Court, October Term, 1937, which brief is a part of the record now before the Secretary. On April 4, 1939, counsel for the Government addressed a letter to the Secretary concerning the point at issue with respect to this exhibit. These two letters have been given the same consideration as if the statements made in them had been made during the course of the argument." Will you produce those letters, Mr. Wallace, for the record, I mean through counsel?

511 A. (Witness complies.)

Q. Counsel has produced two documents here which I will have the reporter identify as Exhibits 8 and 9 and I will ask you, Mr. Wallace, if Exhibits 8 and 9 are the copies of the two letters there referred to.

(Letters referred to marked "Petitioners' Exhibits 8 and 9" for identification.)

A. Yes, I think these undoubtedly are copies of the two letters referred to, although the date on the letter of Government counsel is April 5th, instead of April 4th as here stated.

Mr. GAGE. May it be so agreed, Mr. Cox?

Mr. Cox. Yes.

Q. I direct your attention now, Mr. Wallace, to paragraph 114 of this order of June 20th, Petitioners' Exhibit 1. I also call your attention to the same paragraph in the report and recommendations of the examiner, No. 114, so that you may have both before you. It appears from the paragraph in the order in question that the guide to rate making or the determination of reasonableness of rates contained in the order of June 15, 1933, and recommended by the examiner in his report and recommendations, has been changed in the order which you issued under date of June 20, 1939. Were any exceptions lodged by respondents in that proceeding or by Government counsel to the guide to rate making contained in the original order or tentative order or report and recommendations of the examiner?

Mr. Cox. I object to that question on the ground that if such exceptions were made they are in evidence here and the written documents would be the best evidence as to those objections and what they were.

Mr. GAGE. I want to test the witness' recollection and it is simply a preliminary question, if the Court please, which I believe I have a right to ask.

512 The COURT. Well, I assume that if there were any objections, any written exceptions they are in the record, if they were filed in writing. If you are asking him as to whether there were any written exceptions the objection is sustained, but we understand there were none.

Q. Were there any oral exceptions that you knew of at any time taken?

A. As I remember it, Mr. Gage, you have always objected to this rule, whether it is stated in the manner of the recommendations of the examiner or stated in the manner of the order. I see no essential difference between the two, as a matter of fact. I think one is merely an abbreviation of the other.

Q. Did you personally, Mr. Wallace, write or make the revision of the rule that appears in the order of June 20th?

A. No, I did not.

Q. Will you state, Mr. Wallace, whether or not any notice was given to respondents in that proceeding, or their counsel, prior to the issuance of the final order, of the change made in paragraph 114 of the Order relating to the Guide to reasonableness.

A. Between the date of March 29, 1939, and June 20, 1939?

Q. Yes.

A. I think no notice was given to the respondents of any change in paragraph 114.

Q. Referring now, Mr. Wallace, to these exceptions to proposed findings again, I direct your attention to page 35, paragraph 23. This appears in that exhibit which consists of the exceptions of certain respondents to the report and recommendations of the examiner, petitioners' Exhibit 2 in which the proposed finding is as follows: "The unit per head species costs set out in the TFF 135 in respect of the twenty-three market agencies named

513 therein during the test year, 1931, as found by the Government Cost Study, and each of said per head unit costs was reasonable and necessary to the efficient and economic conduct of the business of said respondents in the respective species." Following that appear numerous citations to the record. Assuming that such proposed finding does not appear in the Order, as it does not, Mr. Wallace, I will ask you whether or not you

read the evidence in the record at the places cited in the proposed finding?

A. You are referring to 64, 67, 84, 341, 595, 620, 630, 648, 649, 875, 886, 892, 926, 968, 970, 975, 977, 933, 985, 997?

Q. Yes.

Mr. Cox. I think I shall have to object.

The COURT. Do you object?

Mr. Cox. I object.

The COURT. Overruled.

A. I did not consult each and every one of these.

Q. Were any analyses, summaries or abstracts of the evidence as here cited submitted to you subsequent to the oral argument and prior to the making of the Order of June 20, 1939?

Mr. Cox. I object to that question also. I think perhaps it is worth stating the ground of this objection and of the previous objection which was overruled, that in the circumstances of this case an investigation of what the Secretary read in the record is irrelevant and immaterial.

The COURT. Overruled.

A. Such an analysis was submitted to me by Mr. Brooke.

Q. Do you have a copy of that analysis?

A. I do not have it with me. Government counsel has quite a mass of data over there; I think Government counsel has possession of practically all of the data.

514 Q. Mr. Wallace, was the data you referred to, consisting as you indicate, of an analysis of this testimony submitted to you by Mr. Brooke, presented to or given to respondents in the proceeding or their counsel before the promulgation of the Order?

A. Not so far as I know.

Mr. GAGE. We now ask the witness to produce, through his counsel or assistants or by himself the analyses, summaries, or abstracts referred to.

Mr. Cox. I am afraid we are not quite clear what Mr. Wallace has in mind. If he means the report and recommendations which were submitted to him by the examiner, we, of course, will be glad to furnish a copy of that which I think is already in evidence. There was one other document to which he might refer which is not a summary of any of the evidence in this record but rather an analysis of certain objections made.

The WITNESS. Yes; it was an analysis of the objections in this document.

The COURT. Is that the only other document that you have?

Mr. Cox. That is the only document.

The COURT. Do you object to producing that?

Mr. Cox. I do not understand that has been called for.

The COURT. Yes; counsel called for everything that the Secretary considered.

Mr. COX. I may be under a misunderstanding but I thought this immediate examination was proceeding upon the assumption that the witness was perhaps responsible for, that some analysis or summary of the evidence was presented to the Secretary.

515 Aside from the report and the recommendations there is, to our knowledge, no such summary or analysis. If Mr Gage wants the analysis of the exceptions presented by respondents in the administrative proceeding I shall be glad to produce those. Do you want them now?

Mr. GAGE. If it was submitted to the Secretary and considered, and if that is what you believe the Secretary has in mind.

Mr. COX. I am going to give this to the witness because I wish to object to the delivery to the respondents, and I do now object to the production of that document on the ground that it is a memorandum prepared by the examiner for the Secretary and as such is confidential, and it is not the province of this Court to inquire into those communications in the circumstances of this case.

The COURT. Gentlemen, we have considered the objection and have somewhat hastily examined the exhibit. If we thought there was any reason for believing that this particular exhibit was of any great importance to the Government and that there was any strong reason why it should not be introduced in evidence, of course we should desire to consider the objection more fully, but it does not seem to be anything more than an attempt by someone in the Department to analyze for the benefit of the Secretary the exceptions and objections which were being considered. Therefore the ruling is and the ruling expresses the view, I may say, of the majority of the judges, that the objection should be overruled but that the objection may be more fully considered hereafter when we have time to give

516 it more full consideration. The exhibit is received in evidence subject to the objection which has been made.

Mr. COX. May I point out, quite apart from the question you have just been considering, that so far as the admission of this particular document is concerned, unless my recollection is at fault, no proper foundation has been laid as yet for its admission. I do not believe the Secretary has even testified he read it. I believe it might be desirable that that be done before it goes in.

The COURT. My recollection may be faulty but I thought the Secretary said there were certain documents submitted to him of which apparently this was one.

Mr. Cox. I wish to say in the case of this document and others that before a foundation is laid it must be shown that he received it and second that it was read.

The COURT. Perhaps you can ascertain by a question whether he read it, if you wish to ask it. (Memorandum marked Petitioners' Exhibit 10 for identification).

Q. I hand you, Mr. Wallace, the Memorandum for the Secretary, document produced by counsel here which has been identified as Petitioners' Exhibit 10 and will ask you if you read and considered the contents of that exhibit?

A. I did.

Q. Will you state whether or not any other memoranda for the Secretary or any other analysis or summary of the evidence was presented to you and considered by you subsequent to the oral argument relating either to this, the proposed finding of fact in paragraph 23 on page 35 of the exceptions or to any other of the proposed findings of fact submitted by respondents.

517 Mr. Cox. I am sorry but I am going to object to that question; I think there are too many things wrapped up there and the first thing we better find out is whether he got any written communications and if he did from whom and we will produce them and they will show what they are. This asking of questions of that character is likely to confuse the witness. He may not be clear whether it is an analysis of evidence or a summary of evidence.

The COURT. I think that objection is well taken and the question should be divided in several parts. Sustained.

Q. State whether or not, Mr. Secretary, any other documents entitled "Memorandum for the Secretary" relating to these proceedings or to the exceptions in Petitioners' Exhibit 2 which you hold in your hand, were prepared for and received by you subsequent to the oral argument and prior to June 20, 1939?

A. I knew of no such document so labeled.

Q. Then, as I understand it, this was the only document that you received from your subordinates subsequent to the oral argument and prior to the signing of the Order on June 20, 1939?

A. I received a letter.

Q. From whom did you receive the letter?

A. I received a letter from Mr. Kitchen.

Q. To what did that letter relate?

A. It related to the Order.

Q. Was there attached to it a draft copy of an order?

A. No.

Q. Did the letter constitute or incorporate any summary or analysis of the evidence?

A. No.

518 Q. Can you state for the benefit of the Court its general character so we may know whether it is admissable?

Mr. Cox. I shall have to object to that question. I think if Mr. Gage wants to go into the question of that letter that he should lay the foundation for its introduction.

The COURT. We would save a lot of time I expect, Mr. Gage, if you would ask for the letter if it is here.

Q. Will you produce the letter, Mr. Wallace, through your counsel? While counsel is getting the letter will you state who Mr. Kitchen is?

A. Mr. Kitchen is head of the market regulatory work in the Department to which division, which was set up in October 1938, the Packers and Stockyards Act was transferred.

Q. Is he Chief of the Packers and Stockyards Administration?

A. The Packers and Stockyards Administration is under Mr. Kitchen.

Q. And Mr. Kitchen is chief of that Bureau?

A. Yes, of the regulatory work of the Department.

Q. And that has taken over the functions of the Bureau of Animal Industry has it, in connection with that?

A. No, it has not taken over the functions of the Bureau of Animal Industry. It has taken over merely the Packers and Stockyards Act which formerly was in the Bureau of Animal Industry.

Mr. Cox. The document requested is now here and I object on the same grounds which I made in connection with the analysis of exceptions from Mr. Brooke, to wit, that this is an interdepartmental, confidential document and in the circumstances of this case it is beyond the province of this Court to inquire into documents of that kind and I wish to object here on the additional ground that there has been no showing here to date

519 that the Secretary acted in any way upon this document. In fact, it is our information that he did not act upon it.

The COURT. The exhibit is received subject to the objection made.

(Exhibit referred to marked Petitioners' Exhibit 11 for identification and is hereby made a part of the record.)

Q. Will you state, Mr. Wallace, whether or not any other documents, recommendations, or suggestions came to you after March 29, 1939, and prior to the issuance of this Order?

A. I know of none.

Q. Turning your attention to Petitioners' Exhibit 1, which is the certified copy of the Order, and to pages 66, 67, 68, 69, 70, 71, 72, 73, 74, and down to paragraph 141 on page 75, there appear to be findings of fact which, if you will examine the other exhibits you have consisting of the report and recommen-

dations of the examiner not contained therein, that is in the report and recommendations of the examiner to which the exceptions were lodged, did you personally revise and rewrite or write this portion of the Order?

Mr. Cox. I object to that. I think this question raises the same issue which was raised before the Court recessed for lunch.

The Court. Without finally passing upon the questions raised in that argument the Court is of the opinion that the question should be answered subject to the objection. We cannot now give full consideration to the argument and we can later correct any error which may result from the improper admission of the evidence.

Mr. Cox. I think for the sake of the record we should know just exactly what revision Mr. Gage is talking about. There may be a number of revisions and we should know.

520 The Court. I thought the revision was contained in the final order.

Mr. Gage. It is, your Honor, and the distinction between the final order and the proposed order of the examiner of course appears from the two orders. As I have stated in my question, and the witness can see by examining the two documents, the difference runs through the entire scope of the pages indicated in these paragraphs. They are in fact new paragraphs and new findings inserted in the Order with the exception of one or two sentences.

The Court. We thing the question is sufficiently definite.

A. You are asking if I personally compiled these tables and inserted them?

Q. Yes, and wrote the other material that is contained herein?

A. There is very little written material until you come to page 70 of course.

Q. And then there is quite a little on pages 72, 73, 74, and 75?

A. I did not compile these tables. I did not write this material.

Q. Will you state who did compile these tables and write these sections of the Order?

Mr. Cox. I object to that.

The Court. Overruled, received subject to the objection.

A. Examiner Brooke.

Q. In order to save time, Mr. Wallace, may I ask whether or not Examiner Brooke wrote and presented to you all the changes that were made in the Order from the Order proposed by him in the first instance to which exceptions were lodged?

Mr. Cox. Same objection.

The Court. Overruled, received subject to the objection.

521 A. He gave to me the recommendations or proposed Order and the final Order.

Q. He gave to you both Orders?

A. Yes.

Q. Did you ever before you issued it present a copy of the final Order with the new findings in it to respondents or their counsel?

A. No.

Q. Will you state how long prior to the 20th day of June 1939, Mr. Brooke presented to you the draft of the final Order?

Mr. Cox. I object to that.

The COURT. Overruled, received subject to objection.

A. On May 4th which was approximately one month and sixteen days before the signing of the final Order.

Q. Mr. Wallace, did you personally examine these Government exhibits referred to in the pages of the final Order to which I have just directed your attention? I refer to pages 66 to 76, inclusive?

Mr. Cox. I object to that question.

The COURT. Overruled, subject to the objection the testimony will be received.

A. You are asking specifically whether I consulted Government's Exhibit 15, pages 121 to 123?

Q. That exhibit and particularly I would like to address your attention to Government's Exhibits 114 from 1 A to 63 A.

A. I assumed that Mr. Brooke had made a correct summary in these tables of the material in the exhibit. I had consulted those exhibits, but I did not give them a detailed consideration with respect to these particular tables.

Q. You mean you had consulted Government's Exhibit 114 A?

A. I cannot be positive that I consulted that specific exhibit. I did consult them but not in the precise and detailed way to verify whether this particular table had been compiled.

522 Q. Assuming that Government's Exhibit 114 A consisted of work papers extremely voluminous in character, penciled memoranda on yellow sheets, thousands of them——

A. (Interrupting.) If that is what it was I would question that I had it. I did have some very bulky material that had figures but if it is as you describe it I did not have it. I do not have clearly in mind the identification.

Q. Did Examiner Brooke advise you that any objection had been made to the introduction in evidence of those exhibits at the time they were offered?

Mr. Cox. Are your talking about the work papers now?

Mr. GAGE. Yes.

A. Well, I don't know whether it is the exhibit you have in mind or not. As I remember it, he indicated the exception had been raised or proposed--or I read it in your exceptions, I don't

remember which, that there was a question as to whether certain cost accounting exhibits should be used in one way or another. As I remember it was a question of break down and allocation of costs between different functions. I don't know whether that is what you have in mind or not.

Q. I believe you are thinking of something else. I believe you are thinking of the differential cost study, probably.

A. Maybe.

Q. Prepared by your accountant. Now, can you recall having any information, oral or written, of the character of objections that were lodged to these work papers or with reference to any agreement about their use in this proceeding?

Mr. Cox. I object to that.

The Court. Overruled.

A. I have no recollection at the moment. It might be my recollection could be refreshed.

523 Q. Did you have oral conferences with Mr. Brooke about those?

A. Yes.

Q. On numerous occasions?

A. I had a conference with him shortly before the oral argument in which he brought in quite a large array of data which he felt it advisable for me to look over to prepare myself for the oral argument, and that would be along about the 25th or 26th of March, a few days before the oral argument. After the oral argument I had a conference with him I believe on May 4th and 5th or maybe it was May 5th or 6th, on a couple of successive days, I think.

Q. How lengthy were those conferences?

A. I don't remember; they were rather lengthy.

Q. Did he make any recommendations as to your rulings upon the exceptions that had been lodged to his proposed Order?

Mr. Cox. I object to that.

The Court. Overruled.

A. At that time he presented this material which you have already seen, Petitioners' Exhibit 10, and we went over those together in my office item by item.

Q. Did he make statements concerning the evidence in the record to you at that time?

Mr. Cox. Object to that.

The Court. Overruled.

A. Well, I assume so. My recollection is not so very clear on that point.

Q. Mr. Wallace, do you recall at the time of the oral argument counsel for respondents presenting to you statistics taken from the records in the Department showing the volume of cattle and

calves handled per agency at Kansas City as applied to
524 various years in connection with the statement involving
the exception to the finding that there were too many agencies in Kansas City, that the volume per agency was twice the average volume per agency at the markets taken as a whole, and was in excess of the volume per agency at any other large market?

A. I have only the most hazy recollection of the details.

Mr. Cox. I object to that.

The COURT. Overruled, received subject to the objection.

A. (Continuing). It would be quite easy to verify the matter from the record.

Q. And you asked a question as to the way these figures worked out or something of that sort. I want to ask you now if Mr. Brooke, presented to you orally any statement concerning that.

Mr. Cox. I object to that.

The COURT. Overruled.

A. With regard to the first part of your question it would seem to me advisable in view of the fact that you have a definite record on the oral argument to—

Q. (Interrupting.) I have handed you that; I simply wanted to know whether or not orally Mr. Brooke made any answer in regard to or concerning this exhibit taken from the Department's files?

A. I don't remember.

Q. Mr. Wallace, also attached as an exhibit in the document you have just had in your hands is another exhibit presented from Departmental records relating to the relative altitude of the rates as prescribed in the Order here with those obtaining at other markets, the rates of which were introduced in evidence showing that as to all consignments under twenty head these rates ordered at about the same time the rates at St. Louis were 128 per cent as
to calves, 166 per cent as to medium weight cattle and 107
525 per cent as to heavy weight cattle of the rates prescribed
in this Order. The rates in another Order made during the period of this impounding at Sioux City were as to calves 160 per cent of the Kansas City rates, as to medium weight cattle 177 per cent, as to heavy weight cattle 114 per cent. The question of checking that exhibit for accuracy was referred to at the argument. Was it checked, substantially?

A. I don't remember, sir.

Mr. Cox. I object to that form of the question.

The COURT. Overruled.

Q. Did you check it?

A. No, I didn't check it.

Q. Did you accept it as accurate?

A. I don't remember, sir.

Q. On page 61 of the Order which you have in your hand, paragraph 129 the statement is made: "There are more firms and a larger personnel on the Kansas City market than are necessary to dispose of shippers' livestock effectively." The Order is dated June 20, 1939. It is your understanding that that statement was applicable as of the date the order was issued or as of the date of the test year, 1931?

Mr. Cox. I object to that question. The document speaks for itself and we have no difficulty in telling what it means.

The COURT. Objection sustained.

Q. Mr. Wallace, if you will, refer to the exceptions again I want to direct your attention to a paragraph commencing at the bottom of page 6 and the top of page 7 which constitutes a proposed finding relating to the number of agencies in business selling livestock at the Kansas City Stockyards upon various dates, various periods of time referred to in the Order and lists those agencies that went out of business during the impounding period. Did you personally examine the evidence concerning the matters referred to in that finding?

526 Mr. Cox. Object to that.

The COURT. Overruled.

A. I think the only attention I gave was that contained in your objections. I assumed your statement was correct although, as I remember it, there was a statement somewhere later in your objections which did not jibe with this particular statement.

Q. Refreshing your recollection, isn't the later statement in these objections a statement as to a further reduction in the number of agencies to the effect that as shown by the records of the Department approximately 40 out of the 61 agencies in business when the proceeding commenced remained in business?

A. Let us get the precise phraseology. Do you remember just where in your exceptions the latter statement appears? It would seem to be possible to get both statements precisely.

Q. It appears on page 18, relating to the evidence at the reopened hearing in paragraph 11 and is a proposed finding to this effect: "The number of market agencies buying and selling cattle, hogs, and sheep on commission at Kansas City was shown by records in the Department of Agriculture to have decreased from 61 as of June 30, 1931, to 59 as of June 30, 1933, and to 41 as of June 30, 1937. Over twenty-five per cent of the market agencies in business at Kansas City as of June 30, 1935, discontinued business between that date and June 30, 1937 (Res. Ex. A–7)."

A. The other one reads how?

Q. The other one read as follows: "In the year 1925, 66 market agencies selling livestock were in business at the Kansas City Stockyards; in 1929, 65 firms were in business; in March 1932, 60 agencies were in business; on July 19, 1933, the date the petitions aforesaid were filed only 51 agencies remained in
527 business. In 1920 the Kansas City Livestock Exchange had 303 members and in March 1930 the Exchange had 262 members of whom 35 were not active," citing a record reference, N. T. 2, pages 180–182.

A. I may say that I looked on this as accurately presented although there is one figure there with regard to 1933 that there is probably sufficient reason for it but I did not check it.

Q. Will you explain just what you have in mind in regard to 1933?

A. Well, the one reference, on July 19, 1933, there were 51 agencies and in the other case on June 30, 1933, 59. There was a question of the 59 and the 51. It had no great relevancy in my mind, I would say.

Q. Did you make any finding as to the number of agencies in business at Kansas City?

A. I think not.

Mr. Cox. I object to that.

The COURT. Overruled.

Q. Did you read the evidence referred to here, Respondents' Exhibit A–7 or the narrative transcript, pages 180 to 182?

Mr. Cox. I object to that.

The COURT. Overruled.

A. I consulted to some extent the narrative transcript but in no great detail and I have no recollection whether it was consulted with respect to this or not.

Q. Referring to page 19 and the paragraph starting with a little b in parenthesis commencing on page 18, I will ask you if you personally examined the evidence at the record references therein referred to, and in order to save time I will ask the same in reference to the paragraph at the bottom of the page, page 19 and all the other paragraphs on pages 20 and 21 relating to the findings which concerned the evidence at the re-opened hearing?

Mr. Cox. I object to that.

The COURT. Overruled.

528 A. Well, my recollection is not so very clear with respect to that point. I have a dim recollection of Mr. Bates' name. I assume we discussed it.

Q. You assume that you discussed it?

A. Yes; I think I discussed that but I did not go back into the record on that point.

Q. You did not go back into the record on these points?

A. I think I did not go back into the transcript of the proceedings.

Q. When you did discuss it with Mr. Brooke were you advised that these were correct or incorrect statements of the evidence?

Mr. Cox. I object to that.

The COURT. Overruled.

A. You see, I have my recollection attached to the name of Bates and I am quite sure as to the material here. There may be something which he presented elsewhere which I cannot give you any clear cut answer on.

Q. Do you have any recollection that he told you, you not having read the evidence, that the facts stated in these proposed findings were not correctly stated upon the evidence?

Mr. Cox. I object to that.

The COURT. Overruled.

A. It is my recollection that Mr. Brooke's conclusion in hearing Mr. Bates' testimony was not such that he felt his testimony had any—that great validity should be attached to his testimony. I accepted Mr. Brooke's judgment in that respect.

Q. You did not personally hear Mr. Bates testify?

A. Of course not.

Q. No witness contradicted him, did they?

Mr. Cox. I object to that, the record will show.

The COURT. Sustained.

529 Q. Were findings such as these proposed here made either in the original Order recommended by Mr. Brooke or in the final Order concerning the evidence at the re-opened hearing?

A. Which findings, will you please indicate? I have lost my page now.

Q. Yes, I am referring to the findings commencing with paragraph g on page 18 and extending on down through paragraph 11 on pages 19, 20, and 21.

Mr. Cox. Mr. Gage, the record shows that these findings were not made in either one of the documents referred to.

The COURT. It does not seem to be clear. The record must show whether they were included in the final findings or whether they were not. Objection sustained.

Q. I direct your attention, Mr. Wallace, to page 16 of Petitioners' Exhibit 1, which is the Order. It is a part of paragraph 15 dd commencing on page 15 in which the exceptions and proposed findings are so described by number, the paragraph concluding with this statement: "Careful consideration has been given to the exceptions filed by counsel for both parties and to the arguments made thereon. Certain ones of the exceptions

were well taken and their content is reflected in the findings hereinafter made. Others of them were without merit and have been given no weight in the determination made and set forth herein." Had you read that statement in the Order prior to the time you signed it?

A. Yes.

Q. And that is what you intended to do?

A. Yes.

Q. With reference to omitted proposed findings that were not contained in the Order?

A. That's right.

Q. On page 50 of Petitioners' Exhibit 2, the exceptions, appears a paragraph starting with the number 61. This is
530 at the end of paragraph 61 at page 52, which paragraph relates to the competency, the validity and the weight of certain opinion evidence and concludes with the statement: "Reference is here made to statements concerning this alleged evidence, all of which was objected to by respondents' counsel at pages 172 to 185, inclusive, of the brief filed by respondents in the Supreme Court of the United States, a copy of which is attached hereto and made a part hereof by reference for all of the purposes of these exceptions. The tentative report and findings are utterly misleading and deceptive and the reader can only gain a fair understanding of the value and character of this testimony by a reading of the entire transcript thereof." Did you personally Mr. Wallace, read the entire transcript of this testimony?

A. No.

Mr. Cox. I object to that if your Honor please.

The Court. Overruled.

Q. Did you read any substantial portion of the transcript of this testimony?

Mr. Cox. Same objection.

The Court. Overruled.

A. I cannot tell how much; I would not say any very large proportion.

Q. Were any analyses or summaries presented to you other than you have brought to the Court here, of this testimony?

Mr. Cox. I object.

The Court. Overruled.

A. I assumed you would have in your exceptions the material part of the transcript.

Q. Did you accept the statement made here as correct in the exceptions, concerning this evidence?

Mr. Cox. I suggest you show him the statement.

531 Mr. Gage. He has it in his hand; he may look at it.

A. I assumed in general, except where I had knowledge to

the contrary, that your statements of factual evidence were correct. In regard to interpretation I found myself having different ideas in many regards.

Q. Turning now, Mr. Wallace, to page 36, paragraph 26, a proposed finding as follows: "Statistics offered in evidence, including Respondents' Exhibit 247, giving the gross proceeds value as realized in 1931 of the different species of live stock sold upon the Kansas City market disclose the degree of relativity as to selling results per salesmen and time required per sale as between all salesmen in service and those salesmen employed by John Clay and Company, Producers Commission Association and Farmers Union Livestock Commission Company," did you personally examine Respondents' Exhibit 247 which disclosed the selling results of these particular agencies, Respondents' Exhibit 9?

A. As I remember it, I was satisfied with your own presentation of their results.

Q. Referring then to page 33, paragraph 17, which relates to these three agencies particularly and which states that all their salary costs were bargained salary costs paid to employees and gives the weighted average per head species cost of these agencies as found by the Government accountant, Exhibit 115, or purports to do so, did you examine Government accountant's Exhibit 115 in this particular to ascertain whether or not that proposed finding was correct or incorrect?

Mr. Cox. Same objection.

The COURT. Overruled.

A. Same answer as to the preceding question; I will give the same answer as to the preceding question.

Q. You assumed that it was correct and would the same apply--

532 Mr. Cox (interrupting). I am going to move to strike that answer as not responsive; I think that is a question which calls for an answer as to whether he did or did not examine the exhibit.

The COURT. Overruled.

Q. Does the same apply to the statement of the amount of the bargained salaries of salesmen and buyers appearing in connection with these three firms at the top of page 34?

Mr. Cox. I object to that.

The COURT. Overruled.

A. Of course, I cannot be absolutely positive on all this but it would be my recollection that the answer would be the same.

Mr. Cox. Move to strike that answer as not responsive.

The COURT. Overruled.

Q. Would your answer be the same, Mr. Wallace, if the same question was addressed to you in connection with Finding No. 144 in paragraph 25 of the exceptions on page 35?

Mr. Cox. Same objection.

The COURT. Overruled.

A. Well, as I remember that table it was very similar to the one in the order except the names of the individual firms were omitted. I would not be positive of that but I expect it is very much the same table.

Q. You do not have any recollection of having examined any evidence?

A. I have no specific recollection, no.

Q. I direct your attention now to paragraph 28, proposed Finding 147, that is on page 36, in which record references are made, in which the statement is that "the record discloses that the average headage per sale of cattle and calves and
533 sheep sold by salesmen of John Clay and Company is almost twice as great as the general market average of sales." And later cites a record reference. Did you examine the evidence on that?

A. I assumed that you stated it correctly.

Mr. Cox. I move to strike that answer.

The COURT. Overruled.

Q. I direct your attention, Mr. Wallace, to the statement appearing in paragraph 29 A on page 23 of the Order of June 20, 1939, that is Petitioners' Exhibit 1, as follows: "The schedule, based as it is upon a charge varying with the number of head of a species in a consignment, automatically produces an increasing per-head revenue as the number of head in a consignment decreases." Did you personally prepare that statement?

Mr. Cox. Object to that.

The COURT. Overruled.

A. No, I did not personally prepare that statement.

Q. Did you examine it in the light of the schedules which appear as prescribed at the conclusion of the Order to ascertain whether it was mathematically correct or incorrect?

Mr. Cox. Object to that.

The COURT. Overruled.

A. I gave it very real consideration.

Q. Just what consideration did you give?

A. As you yourself had made clear in the oral argument there had been an increase in trucking in which had resulted in a reduction in the size of the average consignment. It had also been made clear that sometime prior there had been sufficient shift from railroad shipments to trucking to make it desirable to change the whole basis of rate making in Kansas City. It there-

fore appealed to me as reasonable to recognize that situation and make the charges to a greater extent on various sizes of consignments than had hitherto been the case.

534 Q. Was it your understanding that an increasing per head revenue was automatically produced by this tariff as the number of head in a consignment decreased?

Mr. Cox. I object to that and I should like to be heard on that. That question calls for an answer which must necessarily describe the Secretary's state of mind. He is asked to state what his understanding was.

Mr. GAGE. I will withdraw it, counsel may be right in that conclusion.

Q. It appeared in the Order what the average number of head per truck-in consignment was as distinguished from a consignment arriving by rail, did it not, Mr. Wallace?

A. Yes; I believe so.

Q. That being so and other statements appearing here to the effect that unit cost depended upon the number of consignments in each one thousand head handled, did you make any examination as to the extent of the increase in cost as indicated by the increased number of truck-in consignments appearing on the market during the years of this impounding as compared with what were present on the market in 1931 and 1929?

Mr. Cox. I object.

The COURT. Overruled.

A. It is my recollection that that increase is recognized in the order itself. At the moment I am not dead sure but I think that was in the Order itself.

Q. Was it your understanding then that as this recognized increase occurred the per head rate would increase accordingly, under this tariff?

Mr. Cox. I object to that on the ground he is again calling for conclusions of the Secretary as to his state of mind.

535 The COURT. Objection sustained. We shall be glad, gentlemen, if you will expedite the examination as rapidly as you can.

Q. On August 26, 1938, you overruled a motion asking for personal hearing upon the question of whether or not the former Order should be set aside or treated as a tentative Order. Did you grant oral argument on that motion when requested?

A. No.

Q. You did, however, overrule it on August 26, 1938?

A. That is correct.

Q. Did you receive in that connection from the Solicitor's Department, recommendations, suggestions, or argument as to your ruling?

Mr. Cox. Object to that.

The COURT. Overruled.

A. Well, with the aid of the Solicitor I prepared a statement, a letter. I believe it is a letter.

Q. Can you produce that letter?

A. I don't know whether we have it here or not.

Mr. Cox. I think the Secretary is in error. You mean the opinion which was handed down. That has been introduced in evidence. That was the only writing I know of.

Q. That was what you had reference to?

A. Yes.

Q. The opinion handed down?

A. That's right.

Q. Did the Solicitor make suggestions to you as to how you should rule on motions involved?

Mr. Cox. We object to that.

The COURT. Overruled.

536 A. I had the benefit of the Solicitor's advice, yes.

Q. What did he say in that regard?

Mr. Cox. We object to that.

The COURT. Overruled; received subject to the objection as are all of these answers.

A. Well, I don't remember specifically.

Q. Did he advise you to overrule it without oral argument?

A. I don't remember the details of the conversation.

Mr. Cox. I object to that.

The COURT. We think, at least I believe that is the view of my colleagues, that the question calls for what is clearly immaterial. Objection sustained.

Mr. GAGE. If the Court please, could we have a recess of five minutes to review this letter from Mr. Kitchen?

The COURT. Yes.

Mr. Cox. Mr. Gage, before you do that perhaps I should make this statement which I think in fairness to the Secretary should be made. When asked whether he had received any other written communications I think the Secretary inadvertently, and not understanding the question, answered in the negative when the fact is that he did receive at least one or two other written communications from Mr. Brooke, which you will probably recall now, Mr. Secretary, which escaped your recollection.

The WITNESS. Yes; that is correct.

Mr. Cox. I, of course, personally have no intention of introducing them in the examination I may make of the witness and I want to call Mr. Gage's attention to that.

Mr. GAGE. I thank you for doing so, Mr. Cox, and would you produce them for our examination subject to your objection?

537 Mr. COX. I will produce them and in the interest of expediting this I will stipulate these were received by the Secretary and read by him.

Mr. GAGE. Of course that is subject to the objection?

The COURT. If you will give them to Mr. Gage for his consideration we will take a five minute recess.

(Whereupon a five minute recess was taken.)

Q. Mr. Wallace, your counsel has called your attention I believe to two other memoranda to the Secretary in relation to this case, one dated May 31, 1939, and another dated June 17, 1939, being photographic copies of what purports to be letters by Mr. Brooke directed to you.

(Letters referred to marked Petitioners' Exhibits 12 and 13 for identification.)

Q. (Continuing.) I hand you the documents identified as Petitioners' Exhibits 12 and 13. Are these, as I indicated in my question, memoranda received by you in relation to this case on the dates given, by Mr. Brooke?

A. Yes.

Mr. GAGE. I offer them in evidence.

Mr. COX. We object to the introduction of these documents on the grounds which I have heretofore stated, to-wit, that they are inter-departmental confidential documents and it is beyond the province of this Court to inquire into such matters or to require the production of such documents. I think I should again here and now object on the ground that there has been no showing that the Secretary considered and acted upon these documents although he has testified he read them.

The COURT. Received subject to the objection; objection overruled.

(Petitioners' Exhibits 12 and 13 so offered in evidence are hereby made a part of the record.)

538 Q. I hand you Petitioners' Exhibit 11, being under date of June 13, 1939, a memorandum from the Secretary on the stationery of the Bureau of Animal Industry, signed by C. W. Kitchen, Associate Chief of the Bureau, and ask you if that is the letter from Mr. Kitchen under that date that has been referred to here?

A. Yes.

Mr. GAGE. I offer that letter in evidence.

Mr. COX. As to that we object on the same grounds on which I objected before and here again I wish to point out that there is no showing that the Secretary acted upon the Kitchen letter.

In fact, I think you could argue merely from the existence of the Order in this case and its tenor and contents that there is affirmative evidence that he did not act upon it because the suggestions made in the Kitchen memorandum, if they were suggestions—I doubt if they were, but if they were—they were not adopted by the Secretary.

The COURT. Overruled; received subject to the objection.

(Petitioners' Exhibit 11 so offered in evidence is hereby made a part of the record.)

(Documents marked Petitioners' Exhibits 14 and 15 for identification.)

Q. I hand you Petitioners' Exhibits 14 and 15, Mr. Secretary, which appear to be a memoranda that was attached to the Kitchen letter, from one M. O. Cooper and I will ask you if that memorandum was received by and read by you in connection with the letter from Mr. Kitchen?

A. It was; yes.

Mr. GAGE. I offer them in evidence.

Mr. COX. I object to that on the same grounds.

The COURT. Overruled.

539 (Petitioners' Exhibits 14 and 15 so offered in evidence are hereby made a part of the record.)

Mr. GAGE. I now offer in evidence Petitioners' Exhibits 8 and 9 which were letters passing from myself to Mr. Wallace and from Mr. Dagger the other counsel for the Government, to Mr. Wallace which have not been offered in evidence.

The COURT. Received in evidence.

(Petitioners' Exhibits 8 and 9 so offered in evidence are hereby made a part of the record.)

Mr. GAGE. That is all.

Cross-examination by Mr. Cox:

Q. Mr. Wallace, I call your attention to Petitioners' Exhibit 11, which is the document dated June 13, 1939, headed "Memorandum for the Secretary" written on the letterhead of the Department of Agriculture, Bureau of Animal Industry, and signed C. W. Kitchen, and I ask you whether after you read that memorandum you made any changes in your Findings?

A. I did not.

Q. Did you act in any way in reliance upon this memorandum in connection with this proceeding?

Mr. GAGE. If the Court please, I believe counsel is indulging in something that he objected to me doing, inquiring into the mental process of the Secretary in relation to that letter and I object.

The COURT. I think the objection should be overruled.

A. No.

Mr. Cox. Now, may it please the Court, I move to strike Petitioners' Exhibit 11 together with the memorandum of
540 Mr. Cooper which is attached thereto as Petitioners' Exhibits 14 and 15 on the basis of the answers just given, in which it appears that these documents have no materiality or relevancy in this Court.

The Court. That answer is competent but certainly not conclusively. The Court might, in the case of some witnesses, assume the witness is not accurate in his answer. Overruled.

Q. Now, I should like to call your attention to paragraph 17 of the exceptions of the respondents introduced here I believe as Petitioners' Exhibit 2. Paragraph 17 appears on page 33. Do you recall that in your direct examination you were asked some questions about that paragraph by Mr. Gage?

A. Yes, sir.

Q. Now I ask you whether you accepted as true in all respects the tables and the figures which appear in paragraph 17 of the respondents' exceptions, that is Petitioners' Exhibit 2, when you had this proceeding under consideration?

A. I assumed that with the exception of possible typographical errors they had done an accurate arithematical job of deriving the figures from the exhibits.

Q. Did you assume that the method of computation, as distinguished from the arithematical accuracy of the figures, was correct?

A. With regard to all these exceptions I distinguished between—well, I often times put a different interpretation on the conclusions drawn than they placed.

Q. In answer to a number of questions asked by Mr. Gage, as I recall the record, you testified that you accepted certain statements made in Petitioners' Exhibit 2 as correct when you were considering this proceeding. Do you recall giving those answers?

A. Yes.

541 Q. And in those questions he referred to certain pages in Petitioners' Exhibit 2. I now ask you whether, when you were considering this cause and when you were reading, as you testified, these exceptions, you accepted as true each and every statement of fact that you found in the exceptions?

A. No; I did not accept as true each and every statement of fact that was found in the exhibit.

Q. Did you accept the statements of fact contained in these exceptions as statements of all the pertinent evidence relating to the points discussed in the exceptions?

A. No; I didn't.

Q. Now, sir; I hand you Petitioners' Exhibit 10 which is a Memorandum for the Secretary purporting to be a summary of

the exceptions made by respondents and I ask you whether prior to the making of the Order of June 20, 1939, you read in its entirety that document?

A. Yes; I have already said so.

Q. I now call your attention to Petitioners' Exhibit 2 which is the exceptions of certain respondents to the purported reports and recommendations of the examiner and I ask you whether, prior to the making of the Order of June 20, 1939, you read that document in its entirety?

A. Yes; I read that document in its entirety.

Mr. Cox. I think we are through.

Redirect examination by Mr. GAGE:

Q. Mr. Wallace, in those instances where, as you have testified, you did not read the evidence referred to in the exceptions and received no summary or analysis of the evidence or abstract of the testimony referred to, you relied on, as you testified, the statements made as correct in the proposed findings?

542 A. You mean statements as made by Mr. Brooke?

Q. No; statements as made in the proposed Findings of respondents in these exceptions?

A. No, I did not do that.

Q. Then you mean to tell the Court now that without reading the evidence referred to and cited you accepted Mr. Brooke's statement and decline to accept the statements made to which the record citations referred?

Mr. Cox. I object to that question on the ground that I think that Mr. Gage has gone a little too far in his preliminary generalization that the Secretary did not examine any of the records in the case. The record does not bear that out.

Mr. GAGE. I am talking about the cases he has referred to and I went over quite a large number of the findings. He has testified, I submit to the Court, that he did not read the record.

The COURT. He may answer the question.

Mr. Cox. It seems to me that question is really objectionable in form because he puts in the Secretary's mouth the statement that he had not read the evidence. I do not think the record here quite supports that kind of an assumption.

The COURT. Overruled. The question does not put into his mouth he did not read any of the evidence but certain particular pieces of evidence referred to in the question.

A. I would mean to tell the Court this, that in my own independent judgment after reading the proposed findings of the respondents, which in a large measure are not matters of arithmetical fact deduced from the transcript or from the Gov-

543 ernment exhibit, I arrived at the conclusion that in the main the recommendations as prepared by Examiner

Brooke was the Order that I desire to find rather than the Order as suggested or the recommendations brought forward by Mr. Gage or by the respondents. It would be a long story indeed to indicate why I preferred one over the other.

Re-cross-examination by Mr. Cox:

Q. Mr. Wallace, is it your considered testimony now that you do not recall whether you ever looked at or read any of the exhibits which were introduced in the third administrative hearings?

A. I undoubtedly did read some of them, I know that.

Q. Do you recall looking at any of those exhibits during the oral argument?

A. Yes.

Q. You did look at them during the oral argument?

A. Yes.

Q. Do you recall which ones you looked at?

A. No.

Mr. Cox. That is all.

Mr. GAGE. If the Court please, if counsel for the respondents will stipulate that M. O. Cooper, whose memorandum is attached to one of the memoranda offered in evidence and identified by Mr. Secretary Wallace was, at the time this memorandum was made and prior thereto had been a subordinate under Mr. Kitchen and previously under Dr. Möhler in the Bureau of Animal Industry, connected with the Division of Rates and Practices, we can thereby dispose of one matter that remains as yet undisclosed by the record and these exhibits.

Mr. Cox. We will stipulate to that. I point out again we objected to the entry of the admission of the document which Mr. Cooper signed and our motion to strike the document was overruled. Saving that objection it is so stipulated.

544 *Exhibits introduced by petitioners-appellees at hearing on order to show cause*

Order of Inquiry and Notice of Hearing, dated April 7, 1930, signed by Arthur M. Hyde, Secretary of Agriculture (to be transmitted as original document as per stipulation).

Transcript of first hearing (to be transmitted as original document as per stipulation).

Transcript of oral argument held at Washington, D. C., March 27-28, 1931 (to be transmitted as original document as per stipulation).

Order granting rehearing, dated July 15, 1932, signed by Arthur M. Hyde, Secretary of Agriculture (to be transmitted as original document as per stipulation).

Transcript of second hearing (to be transmitted as original document as per stipulation).

Transcript of oral argument held at Washington, D. C., March 24, 1933 (to be transmitted as original document as per stipulation).

Order dated June 14, 1933, signed by Henry A. Wallace, prescribing reasonable rates (printed as exhibit to Petition in Cause No. 2328, above).

Order dated July 8, 1933, signed by Henry A. Wallace, denying petitions and extending effective date of order of June 14, 1933, for ten days (to be transmitted as original exhibit as per stipulation).

Stipulation and modification of order, signed by Henry A. Wallace, October 14, 1937 (printed elsewhere herein).

Modification of order of June 14, 1933, signed by Henry A. Wallace, November 13, 1937 (printed elsewhere herein).

Modification of order of June 14, 1933, signed by Henry A. Wallace, November 19, 1937 (printed elsewhere herein).

Order reopening proceedings, dated June 2, 1938, signed by Henry A. Wallace (printed as exhibit to Motion for order staying distribution of impounded funds, above).

Tentative findings of fact, conclusion and proposed order of Secretary, served upon respondents in accordance with Order reopening proceeding (to be transmitted as original document as per stipulation).

545 UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MISSOURI, RESPONDENTS

*Respondents' motions and objections with respect to order of Secretary of Agriculture, dated June 2, 1938, purporting to reopen proceeding*

Now come the respondents in the above-entitled proceeding, by their undersigned attorneys, and reserving all exceptions and

objections to the "Tentative Findings of Fact, Conclusion, and Proposed Order, issued as of June 14, 1933," and served upon said attorneys at the direction of the Secretary of Agriculture, and further reserving all exceptions and objections to the jurisdiction of the Secretary of Agriculture to reopen or act in these proceedings, and do hereby move to vacate the order of the Secretary of Agriculture purporting to reopen these proceedings and object to any further proceedings herein, and move to dismiss the same, on the following grounds:

1. That the Packers and Stockyards Act of 1921, insofar as it vests in the Secretary of Agriculture, or other officials or employees of the Department of Agriculture, the rate-making power with respect to services rendered by commission men at the stockyards to owners, raisers or shippers of livestock, is unconstitutional, by reason of the fact it does not provide an impartial trier of the facts, and thus violates the due process clause of the Fifth Amendment to the Constitution of the United States, the Secretary of Agriculture, and said other officials and employees, by virtue of their positions, duties, and activities, being necessarily partial and favorable to the interest of the owners, raisers,
546 and shippers of livestock and prejudiced and biased against the interests of the commission men.

2. That Henry A. Wallace who, as Secretary of Agriculture, signed the said order purporting to reopen these proceedings, if he should preside therein, would not and could not be an impartial trier of the facts, both for the reasons stated in paragraph 1 hereof and for the additional reason that he has prejudged the case in favor of the shippers of livestock and against respondents, which fact respondents offer to prove by means of statements made by said Henry A. Wallace to the public press, over the radio, to members of the Senate of the United States, and otherwise.

3. That for the reasons stated in paragraphs 1 and 2 hereof, said Henry A. Wallace, as Secretary of Agriculture, had no power or jurisdiction to make the said order purporting to reopen these proceedings.

4. That assuming their power to act in these proceedings, neither the Under Secretary of Agriculture nor any of the Assistant Secretaries of Agriculture could or would be impartial triers of the facts, if one of them should preside in the proposed hearings, for the reasons stated in paragraphs 1 and 2 hereof, and further by reason of their being subordinates of the Secretary of Agriculture, who has ordered these proceedings reopened for the purpose of achieving a result determined upon beforehand, to wit, the "validation" of the vitally defective order of June 14, 1933.

5. That said order made by the Secretary of Agriculture purporting to reopen these proceedings was made not for the purpose

of according to respondents a full, fair, and open hearing, but for the sole purpose of "validating" the fatally defective action of the Secretary of Agriculture take on June 14, 1933.

6. That said order of the Secretary of Agriculture purporting to reopen these proceedings is fatally defective, and he had
547 no power or jurisdiction to make it, because it appears on the face thereof that the proceedings proposed are not to be had for the purpose of fixing rates for the future, but solely for the purpose of awarding reparation to shippers who have not petitioned therefor.

7. That by reason of the manner in which the Secretary of Agriculture has proceeded to make the said order purporting to reopen these proceedings, and by reason of the terms thereof, he has deprived respondents of the opportunity to offer evidence concerning conditions affecting the reasonableness of their rates during the period subsequent to June 14, 1933, to which opportunity respondents are entitled, whether or not the reopened proceedings be considered as being directed to the fixing of rates for the future or awarding reparation for the past.

Dated June 30, 1938.

Respectfully submitted.

(S) FREDERICK H. WOOD,
(S) JOHN B. GAGE,
*Attorneys for Respondents.*

Receipt of the foregoing "Respondents' Motions and Objections with Respect to Order of Secretary of Agriculture, dated June 2, 1938, Purporting to Reopen Proceedings," on this 30th day of June 1938 is hereby acknowledged.

(S) MARTIN G. WHITE,
*Solicitor.*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MISSOURI, RESPONDENTS

*Affidavit of bias and prejudice*

548 STATE OF MISSOURI,
*County of Jackson, ss.*

John B. Gage, being duly sworn, deposes and says:

1. That he is of counsel for respondents herein.

2. That on April 25, 1938, the Supreme Court of the United States invalidated an order attempted to be made herein by the Secretary of Agriculture on June 14, 1933, fixing the commission rates to be charged by respondents who are Market Agencies of the Kansas City Stockyards.

3. That on May 8, 1938, Henry A. Wallace, the Secretary of Agriculture, who purported to make said order, wrote a letter to the New York Times, a copy of which is annexed hereto as Exhibit A and made a part hereof, with respect to the administrative and court proceedings herein.

4. That on May 9, 1938, Henry A. Wallace, the Secretary of Agriculture, forwarded a copy of said letter to Hon. Sherman Minton, United States Senator from the State of Indiana, together with a covering letter which was printed in the Congressional Record of May 12, 1938, which said last-named letter is annexed hereto as Exhibit B and made a part hereof.

5. That as of the dates the letters aforesaid were written, the Secretary of Agriculture had not read or considered, or judicially weighed and appraised the evidence in said proceedings or heard argument thereon by respondents, but nevertheless, by the statements therein made, purports to have adjudged the issues adversely to these respondents.

6. That the Secretary of Agriculture has caused a number of press releases to issue from the Department of Agriculture and made over the radio upon a Nation-wide broadcast on April 28, 1938, statements substantially the same in context as the
549 statements contained in Exhibit A and Exhibit B to farmers and livestock producers prejudging and determining adversely to these respondents the issues in the proceeding.

7. On June 2, 1938, the Secretary of Agriculture caused to be served upon the attorneys for the respondent, who had been appellants in the Supreme Court of the United States, an "order reopening proceeding," in consequence of which order this affidavit is filed.

8. That the purpose of the Secretary of Agriculture in attempting to reopen said proceedings is to "validate" the order of June 14, 1933, and is manifestly to make the same order at this time nunc pro tunc as of June 14, 1933, after pretending to consider argument on the part of respondents.

9. By reason of such highly publicized prejudgment without hearing of the issues herein and by reason of his position as Secretary of Agriculture and the relationship of that position to

farmers, including raisers of livestock, to whom said press releases and radio broadcast were particularly addressed, and by reason of all of the above-recited facts, the Secretary of Agriculture is biased and prejudiced against respondents as to the issues to be determined, and hence is disqualified to act herein.

JOHN B. GAGE.

Subscribed and sworn to before me, a Notary Public, on this 12th day of August 1938.

[NOTARIAL SEAL] LAURENA FREEMAN,
*Notary Public.*

My commission expires April 11, 1942.

(Exhibits A and B to be transmitted as original document as per stipulation.)

550 UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MISSOURI, RESPONDENTS

*Special appearance of New Amsterdam Casualty Company and motion to quash and vacate the order of the Secretary of Agriculture, dated June 2, 1938, purporting to reopen proceeding*

Comes now New Amsterdam Casualty Company, a corporation, appearing specially for the purpose of this motion only, without entering general appearance herein, nor submitting itself to any purported or attempted jurisdiction herein, waiving none of its objections or exceptions to any purported jurisdiction herein, and moves that the order of the Secretary of Agriculture, dated June 2, 1938, purporting to reopen this proceeding, be dismissed, quashed, and vacated on the following grounds:

1. That Harry J. Kennaley, one of the original respondents herein, doing business as Harry Kennaley Commission Company, was expelled from the Kansas City Livestock Exchange on January 2, 1936, and from and after said date ceased to be, and was

not, any further engaged in the business of buying and selling livestock, or being a market agency under the Packers & Stockyards Act, and by assignment duly made, the said Harry J. Kennaley did assign and transfer unto the New Amsterdam Casualty Company of Baltimore, Maryland, a corporation, all of his right, title and interest, in and to all sums of money deposited and impounded with the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, No. 2356, In Equity, in accordance with the orders made in such cause.

551 2. That the said Harry J. Kennaley died on January 9, 1938.

3. That by virtue of the foregoing facts, the said order of the Secretary of Agriculture, dated June 2, 1938, could not in any wise be operative or effective, and said order has not, and could not, be served upon the said Harry J. Kennaley, nor was it served upon the New Amsterdam Casualty Company, nor would it be of any force or effect to serve the same upon the New Amsterdam Casualty Company as said Company is not conducting the business formerly conducted by Harry J. Kennaley, neither has it ever done so, nor has it ever been, nor is it now, a market agency as defined in the Packers & Stockyards Act.

4. That by virtue of the foregoing facts, New Amsterdam Casualty Company is not subject to, nor can it be made subject to, the Packers & Stockyards Act, nor to the control or jurisdiction of the Secretary of Agriculture, or the Department of Agriculture of the United States; neither can it be required to assume the place or position of Harry J. Kennaley in this proceeding, nor can he be made a party, or required to respond herein either through his estate or through any person or corporation to whom he has assigned anything of value, such as that of which the New Amsterdam Casualty Company is his assignee.

5. That the Secretary of Agriculture of the United States, by his purported order cannot now cure the failure to give the said Harry J. Kennaley during his lifetime a full hearing and that the failure to do so at the time when it properly should have been done, cannot be cured by the present attempted action on the part of said Secretary of Agriculture.

6. That the attempted action of the said Secretary of Agriculture is not in accordance with the provisions of the

552 Packers & Stockyards Act and the said New Amsterdam Casualty Company, the now owner of a portion of the funds impounded in the aforesaid cause in the United States District Court for the Western District of Missouri, is not, and cannot be, made a party to any hearing or proceeding under said Pack-

ers & Stockyards Act since it is not now, and never has been, a market agency, nor subject to that Act or to the regulations of the said Secretary of Agriculture.

7. That the Packers & Stockyards Act contains no provisions nor procedure whereby any retrospective or retroactive determination of the reasonableness and lawfulness of rates charged by market agencies might be made and enforced after such rates had been validly collected, but, rather, said Act only contemplates regulation and action by the Secretary of Agriculture prospectively and in respect of rates to be charged thereafter by persons then continuing to be in business as market agencies.

Respectfully submitted.

(s) MORRISON, NUGENT, BERGER, BYERS & JOHNS,
*Kansas City, Mo.,*
*Attorneys for New Amsterdam Casualty Company.*

AUGUST 13, 1938.

Exceptions of New Amsterdam Casualty Company to "Order Reopening Proceeding," dated June 2, 1938, and "Tentative Findings of Fact, Conclusion, and Proposed Order" (to be transmitted as original document as per stipulation).

553

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MISSOURI, RESPONDENTS

*Respondents' further motions and objections with respect to order of Secretary of Agriculture, dated June 2, 1938, purporting to reopen proceeding*

Now comes Burlington Livestock Commission Company, Cassiday-Southwestern Commission Company, Crider Brothers Commission Company, Warren Cummings doing business as Warren Cummings Livestock Commission Company, Charles Dixon Commission Company, Ehrke-Martin Livestock Commission Company, E. W. Elliott and R. K. Swain, a partnership doing busi-

ness as Elliott, Swain & Company, Farrar, Davis & Campbell Livestock Commission Company, W. G. Gladish, doing business as Gladish Livestock Commission Company, O. C. Haggart, John H. Wilson, and Glen Haggart, a partnership doing business as Haggart, Wilson Livestock Commission Company, Inman-Hutton Livestock Commission Company, W. C. Kile, doing business as W. C. Kile Livestock Commission Company, R. H. Lewis, doing business as Lewis Livestock Commission Company, William M. Liggett, doing business as Kansas City Livestock Commission Company, National Livestock Commission Company, John M. Nichols, doing business as John M. Nichols Livestock Commission Company, Bryant Poole, D. L. Dempsey, and James Rutherford, a partnership doing business as Poole-Dempsey-Rutherford Livestock Commission Company, Ryan-Robinson Livestock Commission Company, The Stagner, Pieronnet & Willis Livestock Commission Company, Swift & Henry Livestock Commission
554 Company, C. A. Stuart, doing business as Stuart-Robinson Livestock Commission Company, L. Knop, Henry F. Thies, E. J. Thies, F. W. Thies, and A. C. Thies, a partnership doing business as H. Thies & Sons, Wilson, Egan & Company, Witherspoon Livestock Commission Company, Ralph W. Wright, Wm. N. Baucus, partners, doing business as Wright and Baucus Livestock Commission Company, John Clay, F. H. Connor, Alan F. Wilson and Chas. G. Smith, partners, doing business as John Clay and Company, L. E. Tice, doing business as Knight & Tice Sheep Commission Company, J. M. Laird and G. T. Laird, partners, doing business as Laird Bros. Livestock Commission Company, Charles F. Vieregg and Robert H. Stover, partners, doing business as W. M. Leitch Sheep Commission Company, Martin Blomquist & Lee Commission Company, Grover C. Maxwell and Ben J. Furnish, partners, doing business as Maxwell & Furnish Livestock Commission Company, H. M. Baker, W. C. Bradshaw, Barney Metz, and Louise McGrew Moffett, a partnership doing business as the Moffett Livestock Commission Company, R. W. Webster and Joseph P. Smith, partners, doing business as Webster Bros. & Smith Commission Company, being respondents in this proceeding upon whom notice has been served by direction of a purported order of the Secretary of Agriculture dated as of the 2nd day of June 1938, entitled "Order Reopening Proceeding," and, reserving all exceptions and objections to the power and jurisdiction of the Secretary of Agriculture to reopen or otherwise proceed further under his Order of Investigation and Inquiry, dated April 7, 1930, or his Order for Rehearing dated July 15, 1932, or to act in these proceedings, do hereby move to vacate said "Order Reopening Proceeding" upon the following grounds in addition to those presented by motions and objections heretofore filed.

555 1. That the proposal contained in the so-called Tentative Findings of Fact, Conclusion, and Proposed Order, upon which said Order Reopening Proceeding is predicated, to enter a final order nunc pro tunc as of June 14, 1933, the effect of which it is claimed would be to retroactively establish as unreasonable and illegal the rates and charges lawfully collected by the said respondents for stockyard services during the period between June 14, 1933, and November 1, 1937, and retroactively to determine to be reasonable and lawful the rates and charges prescribed and set forth in said "Tentative Findings of Fact, Conclusion, and Proopsed Order" is in violation of the provisions of the Packers and Stockyards Act of 1921, and constitutes an attempted exercise of judicial power as distinguished from administrative authority, not conferred by the Packers and Stockyards Act of 1921 upon the Secretary of Agriculture, and the exercise of which would violate the provisions of Article III of the Constitution of the United States.

2. The said "Order Reopening Proceeding" is predicated on misstatements and misconstructions of the substance and legal effect of the decisions, orders, and decrees of the District Court for the Western Division of the Western District of Missouri and the Supreme Court of the United States, and the invalid order of June 14, 1933, cannot be validated because it was held invalid by the Supreme Court of the United States and the District Court for the Western Division of the Western District of Missouri, by reason of a "vital defect" and not a "mere irregularity of practice."

3. Because said Order of Investigation and Inquiry and Order for Reh'aring were addressed and directed to schedules of Rates and Charges for stockyard services long since superseded by subsequent and later schedules of Rates and Charges duly and

556 lawfully filed with the Secretary of Agriculture pursuant to the provisions of the Packers and Stockyards Act of 1921 and duly published and thereafter effective, and with respect to which no order for the suspension thereof, as provided for in said Act, stating the reasons therefor, has ever been made or entered by said Secretary of Agriculture, in that a new schedule of Rates and Charges was filed by these respondents on May 11, 1932, and became under the law effective as of May 23, 1932, and each and every of said respondents did file pursuant to said Act during the month of October 1937, complete schedules of Rates and Charges superseding all prior schedules of Rates and Charges and covering all stockyard services, thereafter to be rendered by each of said respondents, which said schedules became under the law effective on the first day of November 1937, were approved by the Secretary of Agriculture and were, on June 2, 1938, and

ever since have been and now are, in force and effect as the lawful Rates and Charges to be collected by each of these respondents.

4. The so-called Tentative Findings of Fact, Conclusion, and Proposed Order, upon which the "order Reopening Proceeding" was predicated, were prepared by the person who was the attorney actively prosecuting the complaint under the Order of Inquiry and Investigation and Order for Rehearing and not by the Examiner designated by the Secretary to hear the evidence taken in the proceeding, or by the Secretary or any authorized and impartial trier of the facts, and were not prepared in the manner required by the Rules of Practice, referred to in said "Order Reopening Proceeding," and promulgated in connection with such matters by the Secretary of Agriculture, and do not and cannot constitute either Tentative or Final Findings of Fact, Conclusion, and Order of the Secretary of Agriculture himself, by reason of the fact that he has never accorded
557 to these respondents the full hearing under said orders and complaint required by the provisions of the Packers and Stockyards Act of 1921.

Now, therefore, these respondents move that said "Order Reopening Proceeding" be vacated and for naught held, and these respondents do, in the event this motion to vacate said "Order Reopening Proceeding" be denied and overruled, further move that said order be modified in the following respects and for the following reasons:

It is manifest that the so-called Tentative Findings of fact Conclusion, and Proposed Order served with the order of June 2, 1938, and upon which its issuance is attempted to be justified, are predicated wholly upon a stale record and are neither related to nor based on any testimony or evidence concerning any later period than the early part of the year 1932, and are made without reference to the facts, conditions, and circumstances affecting the reasonableness of respondents' Rates and Charges existent or prevailing in later years; that such facts, conditions, and circumstances existing in the years 1933, 1934, 1935, 1936, and 1937, were materially different from those which the evidence disclosed existed and prevailed in the years immediately prior thereto and under consideration in the hearings, and were facts, circumstances, and conditions which justified and demanded a substantial increase in respondents' rates and charges, and many of which could not have been and were not forecast as to their future existence by any evidence appearing in the record made in the proceeding which the Secretary has attempted to reopen.

Wherefore, respondents move, in the event said order of June 2, 1938, be not vacated, that the same be modified by striking out and withdrawing therefrom all reference to "Tentative Find-

ings of Fact, Conclusion, and Proposed Order issued of
558 June 14, 1933" and request the recision of that part of the order of June 2, 1938, purporting to reopen this proceeding which requires respondents to except thereto within a specified time, and respondents further move, in the event the motion to vacate said "Order Reopening Proceeding" be overruled, that the Secretary designate an Examiner pursuant to Rule 7 of the Rules of Practice of the Secretary of Agriculture to hear evidence which respondents expressly demand an opportunity to offer through the testimony of witnesses and by other proper means concerning (a) the increased cost of rendering stockyard services at Kansas City in the years 1933, 1934, 1935, 1936, and 1937 and the increased difficulty during said years encountered by each of respondents in the rendition of such services as compared with the years 1929 to 1932, (b) evidence as to the decline in the revenues of respondents and in the receipts of certain species of livestock at Kansas City during some or all of the first-mentioned years as compared with the last-mentioned years, (c) evidence as to the increase in the value of respondents' services as rendered and in the amounts of money received and paid for the same quantities of livestock, as handled by respondents, in some or all of the first-mentioned years as compared with the last-mentioned years and (d) all such further evidence material and relevant to the proceeding as may relate to the facts, circumstances, conditions arising and affecting respondents' operations in said first-mentioned years.

Now, therefore, respondents further move for a personal hearing upon each and all of the motions filed herein before the Secretary of Agriculture, if and in the event that their motion heretofore filed and addressed to his disqualification by reason of bias and prejudice be overruled.

Dated August 15, 1938.

559 Respectfully submitted.

(S) FREDERICK H. WOOD,
(S) JOHN B. GAGE,
*Attorneys for the Respondents.*

THOMAS T. COOKE,
CARSON E. COWHERD,
*Of Counsel.*

Acknowledgment of filing and receipt of service of the original and copies of the foregoing "Respondents' Further Motions and Objections with respect to Order of Secretary of Agriculture, dated June 2, 1938, Purporting to Reopen Proceedings" is hereby acknowledged this 15th day of August 1938.

(S) MARTIN G. WHITE,
*Solicitor, Department of Agriculture.*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MISSOURI, RESPONDENTS

*Affidavit as to changed conditions since closing of evidence*

560 STATE OF MISSOURI,
*County of Jackson, ss:*

John B. Gage, being first duly sworn, states that he is one of the attorneys for respondents herein; that he is familiar with the situation that existed during the years 1929, 1930, and 1931 and has existed since 1931 with respect to the operations of respondents as market agencies at the Kansas City Stockyards and that substantial changes have occurred since 1931, the year upon which the order herein was based, and the year 1932, affecting practically all of the costs incurred by respondents in transacting the business of market agencies at said Kansas City Stockyards and the reasonableness of their rates and charges.

Among such changes are the following:

(a) A very substantial decrease in the receipts of livestock at Kansas City, resulting in a diminished gross income of the respondents;

(b) Increased cost of living and a reasonable demand by necessary employees for increased wages and compensation;

(c) A marked increase in the arrival of livestock by truck which has necessarily increased the handling of small consignments, occasioning more work and greater expense per head handled;

(d) Increased costs of stationery, printing, postage, and other materials.

(e) Increased expenses due to taxes as the result of Federal and State legislation since 1931;

(f) Drought in the territory tributary to the Kansas City market has during a portion of said period greatly in-
561 creased the seasonality or variation in receipts, resulting in

heavy runs at certain periods and a minimum of receipts at other periods, and has depleted the producing herds of livestock in the territory tributary to said market;

(g) A very much higher level of livestock prices than those existing in the latter part of the year 1931 and the first part of the year 1932 as developed by evidence in the present record.

This affiant further states that said changes affecting the income of respondents and the impounding of a portion of the lawful rates and charges collected by respondents, with the United States District Court for the Western Division of the Western District of Missouri, have impaired the efficiency of the market to such an extent as to force out of business many agencies so that the number now engaged in the sale of livestock at Kansas City has been reduced to 44 as compared with 62 agencies in business at the commencement of the hearing of evidence in 1932, and the capital accumulated through past operations over a long period of years of many, if not all agencies, has been impaired to a degree that threatens the solvency of the remaining agencies now engaged in business, many of which have been compelled to borrow money for operating capital in the hope of eventual recovery of the funds impounded. The financial situation of many of the agencies has compelled reduction in wages paid to necessary, efficient, and competent employees out of line with existing living costs and in many, if not most instances, the services of said employees have been retained by promises that in the event the funds so impounded are eventually recovered there will be at least a partial restoration to such employees of amounts deducted from their compensation by reason of such pay cuts.

562 This affiant states that none of these facts which are essential factors in the fixing of rates and which have been developing during all of the period since the closing of the taking of evidence in this proceeding appear of record herein. Said record is stale, misleading, incomplete, and unsuitable for use in connection with the determination of just, reasonable, and nondiscriminatory rates and charges pursuant to the Packers and Stockyards Act, 1921.

(S) JOHN B. GAGE.

Subscribed and sworn to before me this 13th day of August 1938.

[SEAL] (S) LAURENA FREEMAN,
*Notary Public.*

My commission expires Apr. 11, 1942.

Acknowledgement of filing and receipt of service of the original and copies of the foregoing "Affidavit as to Changed Condi-

tions since Closing of Evidence" is hereby acknowledged this 15th Day of August 1938.

(S) MASTIN G. WHITE,
*Solicitor, Department of Agriculture.*

Statement Objecting to Procedure and Rulings of Examiner, dated August 15, 1938 (to be transmitted as original document as per stipulation).

"Exceptions of Certain Respondents to Purported Tentative Findings of Fact" together with two documents marked "Attachment to Respondents' Exceptions Filed August 15, 1938" (to be transmitted as original document as per stipulation).

Brief in U. S. Supreme Court, Term 1937 (to be transmitted as original document as per stipulation).

Exhibit attached thereto (to be transmitted as original document as per stipulation).

560 UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE
*v.*

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, ET AL., MARKET AGENCIES, DOING BUSINESS AT THE KANSAS CITY STOCKYARD, KANSAS CITY, MISSOURI, RESPONDENTS

*Order for taking additional evidence*

Whereas, respondents, on August 15, 1938, filed a motion in the above-entitled cause praying that the Secretary of Agriculture designate an examiner to hear evidence which respondents desire the opportunity to offer through the testimony of witnesses, and by other proper means;

It is therefore ordered that John C. Brooke, Esq., be and he is hereby designated as examiner for the purpose of taking such additional relevant and material evidence as the parties in this proceeding may desire to offer with respect to conditions subsequent to June 14, 1933;

And it is further ordered that before the taking of such evidence the examiner shall hear the parties with respect to the exceptions

filed by them to the tentative findings of fact served in accordance with the order of the Secretary of June 2, 1938;

And it is further ordered that after hearing argument and the additional evidence the examiner shall prepare and submit to the parties a report in accordance with the rules of practice promulgated by the Secretary of Agriculture governing proceedings under the Packers and Stockyards Act, 1921, as amended;

And it is further ordered that said hearing shall begin at ten o'clock a. m. on September 12, 1938, in Room 201, Administration Building, United States Department of Agriculture, Washington, D. C., and at such other times and places as the examiner may direct;

And it is further ordered that a copy of this order be served upon the parties by registered mail.

In witness whereof, the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, District of Columbia, this 26th day of August 1938.

(Signed) H. A. WALLACE,
*Secretary of Agriculture.*

564

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, ET AL., RESPONDENTS

*Opinion on motions*

I have given careful consideration to the several motions filed by the respondents in the above-entitled case. My conclusions with reference to the disposition of the motions are set forth below.

(1) On April 25, 1938, the Supreme Court found that the proceedings which terminated in my order of June 14, 1933, fixing reasonable rates and charges, were fatally defective because the proposed findings had not been made available to respondents at any time prior to the final argument. In an effort to correct this defect, I entered an order on June 2, 1938, reopening the

proceeding and directed that "the Proceedings, Findings of Fact, Conclusion and Order" as issued by me on June 14, 1938, be served upon respondents as the tentative findings of fact, conclusion and order in this proceeding, and directed that respondents be given 30 days in which to file exceptions to the tentative findings of fact, tentative conclusion and proposed order and in which to make any appropriate motions or objections with respect to further proceedings in this case. At respondent's request this time was subsequently extended to August 15, 1938.

(2) On June 30, 1938, respondents moved to vacate the order reopening the proceeding on several grounds. It was first urged that the Packers and Stockyards Act in so far as it vested ratemaking power in the Secretary of Agriculture is unconstitutional because it does not provide an impartial trier of the facts, the Secretary and other officials of the Department necessarily being partial and favorable to the owners and shippers of livestock and biased against the interests of the commission men. It was further urged that the present Secretary of Agriculture could not be an impartial trier of the facts because he had prejudged the case in favor of the shippers and that the subordinate officials in the Department were under a like disability. It was also urged that the proceeding was reopened not for the purpose of according respondents a full, fair, and open hearing but for the sole purpose of validating the order of June 14, 1938, and of awarding reparation to shippers who have not petitioned therefor. And it was further urged that the manner in which the Secretary had reopened the proceeding had deprived the respondents of the opportunity of offering evidence concerning conditions affecting the reasonableness of their rates during the period subsequent to June 14, 1938.

(3) On August 15, 1938, the respondents made a further motion to vacate the "Order Reopening Proceeding" ques-
565 tioning both the constitutional and statutory power of the Secretary to proceed with the hearing and questioning the propriety of the Secretary using the tentative findings of fact, conclusion, and proposed order as the basis of a further hearing in the proceeding on the ground that they were not prepared in accordance with the rules of practice of the Department. As a part of the same motion respondents moved that in the event that the "Order Reopening Proceeding" was not vacated, the tentative findings should be stricken out of the proceedings and the respondents permitted to offer to an Examiner designated by the Secretary stated evidence bearing upon the reasonableness of the rates to be fixed for the period subsequent to June 14, 1938.

(4) On August 13, 1938, the New Amsterdam Casualty Company, which has been substituted as respondent for Harry J. Kennaley, doing business as the Harry Kennaley Commission Company, moved to vacate the order of June 2, 1938, on the ground that the death of Harry J. Kennaley made it impossible to accord said Kennaley a full hearing and thus cure the prior error. By an additional motion, the New Amsterdam Casualty Company raises questions of constitutional and statutory authority similar to those raised in the above motions.

(5) Many of the issues raised by respondents' motions are of a character that may be more appropriately dealt with at the close of the hearing without prejudice to respondents' rights. A number of the issues raised have been argued in the District Court and an appeal thereon is pending in the Supreme Court. It may be doubted whether an administrative official has power to pass on some of the questions raised, particularly those of constitutional authority. Certainly the issues raised by respondents are not so clear as to convince me that it would be futile to continue this proceeding. I shall, therefore, not vacate the "Order Reopening Proceeding" but shall continue the proceeding reserving to respondents the right to renew their motions at a later stage when the nature and extent of the issues have become more clearly defined.

(6) There are, however, two points raised by respondents' motions which I think I should deal with now. The first relates to the motion to disqualify me for bias and prejudice. I refer now to those parts of respondents' motion which relate to me personally, and to the affidavit of bias and prejudice filed by their counsel. I am not referring to the rather novel suggestion of respondents that the entire staff of the Department of Agriculture is disqualified from acting.

After careful and serious consideration I have determined that I should not disqualify myself as a matter of law or as a matter of expediency. I might possibly have reached a contrary conclusion as a matter of expediency, were it not for the fact that respondents in filing their exceptions to the tentative findings of fact "deny that any authority to hold hearings or determine issues as herein presented is extended by the Packers and Stockyards Act, 1921, to any person other than the Secretary of Agriculture himself." In the circumstances of this case, I can not and I will not shirk the grave responsibility placed upon me by Congress to determine reasonable rates for services to farmers.

This proceeding first came before me at the very beginning of my incumbency of the post of Secretary of Agriculture.

566 I attempted to follow the established practice and procedure of the Department. I was new at my job but I tried to fulfill it as conscientiously as I could with the knowledge that I then had. Soon after coming into office I put into effect the practice of serving a report with opportunity to the respondents to file and be heard on exceptions to the report. Immediately after the Supreme Court, in May 1936, pointed out that it would have been better practice to submit a report to the parties and hear argument on their exceptions I adopted rules of practice specifically providing for this procedure. And I certainly never said or wrote anything which reflected upon the wisdom of the Supreme Court's suggestion.

The respondents have based their charge of bias and prejudice upon certain statements made by me shortly after the decision of the Supreme Court on the second appeal on April 25 last. And they assert those statements indicate that I have prejudged the case against them.

I deeply regret if any of my remarks taken out of their context gave them any such impression. I did criticise the opinion of the Court before I was advised of the possibility of my reopening the case and thereby avoiding the release of the impounded funds without regard to the substantive rights of the parties. But in reopening this case I shall have no power to judge or to alter the mandate of the Supreme Court. I must endeavor to conduct this proceeding in a manner consistent with the mandate of the Supreme Court and if I err, my action will be subject to correction ultimately by that Court. In criticising, rightly or wrongly the opinion of the Supreme Court, I can scarcely be said to have prejudged the action that I may take in this proceeding which, if it is to stand, must of necessity be consistent with that opinion.

I did make the statement that the effect of the Supreme Court's decision was to give to the commission men several hundred thousand dollars which rightly belonged to the farmer. I am no lawyer. I read the decision of the Supreme Court of April 25th and I thought it meant what the respondents claimed—that the impounded funds were to be released to the commission men. It seemed to me that, since the Supreme Court had expressed no opinion upon the merits, the farmers on the record had a much better claim to the impounded funds than did the commission men. However serious the defects found in the proceeding before me, the District Court which had reviewed my findings on the merits, had upheld them. In other words, I had found certain rates to be reasonable and the only court passing on their reasonableness had upheld my finding. Under those circumstances, I saw no ground for giving the impounded excess

to the commission men without regard to the merits. And I think that is all that my words that the money belonged to the farmers could be interpreted to mean. I know that is all that I intended them to mean.

On the facts as I then knew them and without any further proceedings, I thought that the farmers had a better claim to the money than the commission men and that it was unfair to give the money directly to the commission men. I still think so. Again I say that that is all I intended my words to mean.

In petitioning for a rehearing before the Supreme Court, the Solicitor General took the position that the Court had
367 not decided but ought to decide how the excess funds should be disposed of. The Court denied the rehearing, but stated that the questions raised by the Solicitor General were appropriately for the District Court, to which the case was remanded for further proceedings. The Supreme Court indicated that what further proceedings the Secretary may see fit to take in light of its decision and what determinations may be made by the District Court in relation to any such proceedings were matters which it (the Supreme Court) would not attempt to forecast.

These statements of the Supreme Court led me to believe that I had been too hasty in my conclusion that the effect of its decision was to turn over the impounded funds to the commission men without regard to the merits and that I was not without power to correct the procedural error of which the Court had found me guilty.

Whatever may have been my findings on the basis of the prior hearing, I see no reason why I cannot as fairly and as impartially conduct further proceedings consistent with the opinion of the Supreme Court as any other inferior court whose action has been reversed by an appellate court. I, naturally, thought my original decision was correct at the time. But I have never said or intended to say that upon a further hearing with a new procedure or with the benefit of fresh argument or new evidence I could not or would not change my findings. In view of the defect found in my previous procedure and with the knowledge that my conduct of this proceeding will be most carefully scrutinized, I have every reason to guard against any possible error of procedure or of judgment. My concern is not to vindicate my past judgment, but to see that the substantive rights of the parties are fairly determined.

(7) There is a further point raised by the respondents' motions which I think I ought to deal with now. The respondents contend that the tentative findings should be withdrawn because they

are predicated wholly upon a stale record and that I should designate an examiner to hear stated evidence bearing upon the reasonableness of the rates to be fixed for the period subsequent to June 14, 1933. In support of their contention, counsel for respondents has filed an affidavit as to changed conditions since the date of that order.

The tentative findings were adopted by me after a careful study of the record and I think that at this stage the proceeding will be expedited by a consideration of these findings in light of the exceptions to them which the respondents have already filed. The findings show respondents' operations for the period just prior to the order of June 14, 1933, and will, I believe, prove very helpful as a working basis for this hearing.

On the other hand, I have never had any intention of depriving the respondents of the opportunity of offering evidence concerning conditions affecting the reasonableness of their rates during the period subsequent to June 14, 1933. In reopening the proceeding, I expressly gave them time in which to make any appropriate motions or objections with respect to further proceedings in this case. At the prior hearing we were obliged to consider forecasts of conditions which can now be checked in light of subsequent events. I shall accordingly designate an examiner to hear such further evidence as he may find material and relevant
in regard to conditions subsequent to June 14, 1933, which
568 affect the reasonableness of the rates to be fixed by the
Secretary. The examiner will consider the tentative findings in light of the exceptions taken thereto and the new evidence adduced and may revise such findings or substitute or add such new findings as he may find necessary or appropriate. What weight will be given to the new evidence, and what to the old, must be determined as the hearing progresses. The respondents will be given an opportunity to make exceptions to such revised and new findings as the examiner may make before I hear final arguments on the case.

In accordance with the views herein expressed, an examiner will be appointed for the purpose of allowing the respondents opportunity to submit such additional relevant and material data as they may desire with reference to conditions subsequent to June 14, 1933.

The respondents may file exceptions to any part of this opinion within 30 days so that any considerations overlooked by me may be brought to my attention before final decision of the cause.

(Signed) H. A. WALLACE,
*Secretary of Agriculture.*

AUGUST 26, 1938.

Transcript of third hearing (to be transmitted as original document as per stipulation).

L:JCB:mw.
10-31-38.

OCTOBER 31, 1938.

Re Secretary of Agriculture vs. L. B. Andrews et al., B. A. I. Docket No. 311

Mr. JOHN B. GAGE, Esq.
*1020 Bryant Building, Kansas City, Missouri.*

DEAR MR. GAGE: Government counsel has informed the examiner that he does not desire an opportunity to introduce further evidence in the above entitled case and the record is, therefore, regarded as closed.

The examiner now invites and urges counsel for both parties to submit their proposed findings of fact and proposed order on the complete record so as to aid the examiner in preparing his tentative report. In this connection it is suggested that counsel collaborate in preparing these proposed findings and order so that as many of the findings, and as many of the provisions of the order, as possible may be agreed upon.

569 The counsel will be given 21 days from the date hereof to submit their recommendation to me.

Very truly yours,

JOHN C. BROOKE, *Examiner.*

Proposed findings of fact and proposed order, dated December 27, 1938, submitted by counsel for Government (to be transmitted as original document as per stipulation).

Proposed findings, filed December 28, 1938, by counsel for petitioners (to be transmitted as original document as per stipulation).

Report and recommendation of examiner, dated January 17, 1939 (to be transmitted as original document as per stipulation).

Letter, dated January 28, 1939, from John B. Gage to Mastin White, Solicitor, requesting ten days additional time for filing

exceptions to examiner's report (to be transmitted as original document as per stipulation).

Letter, dated February 1, 1939, from Mastin White, Solicitor, to John B. Gage, granting extension of ten days (to be transmitted as original document as per stipulation).

Exceptions to examiner's report, filed by counsel for Government (to be transmitted as original document as per stipulation).

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*vs.*

L. B. ANDREWS, ET AL.

570 *Motion of respondents to suppress the report and recommendations of examiner dated January 17, 1939, and for a rehearing*

Respondents hereby move that the Secretary of Agriculture shall suppress the "Report and Recommendations of Examiner" issued herein on January 17, 1939, and shall grant a rehearing herein, together with such other relief as may be appropriate, and in support of such motion allege as follows:

1. That the findings and decision which the Secretary of Agriculture purported to make on June 14, 1933, and which were invalidated by the decision of the Supreme Court of the United States, were not set aside, as duly demanded by respondents.

2. That the Trial Examiner, while pretending to reconsider the case, did not in fact do so but adopted in substantially their full extent the findings in said decision of June 14, 1933, the findings as to reasonable rates being adopted without deviation, although such rates were stated in odd cents per head and variant from any rates theretofore in effect, or prescribed, thus carrying out the previously announced purpose of the Secretary of Agriculture to "validate" his order for the purpose of avoiding and frustrating the decision of the United States Supreme Court.

3. That the Trial Examiner, while purporting to act as an "impartial arbiter of the facts," was actually, throughout the reopened hearings, a member of the Solicitor's department, which, as stated by the Secretary of Agriculture in a letter to The New York Times, dated May 8, 1938, exercises the prosecuting functions of the Secretary of Agriculture, was a co-employee therein of the prosecuting attorney who insisted on the adoption of
571 the findings of June 14, 1933, which were made by the members of the Solicitor's department and employee of the Department of Agriculture, who originally prosecuted the case.

4. That the tentative findings and report present what purport to be the judicial conclusions of the Trial Examiner, whereas under the law he has no authority to draw judicial conclusions but only to "sift and analyze" the evidence.

5. That the Trial Examiner refused to make findings of fact upon undisputed evidence in the record which which he had held to be relevant and material to the issues although requested so to do by respondents and that the failure and refusal of the Examiner so to do was unfair and prejudicial to respondents and the result of prejudice on the part of the Examiner arising out of his official connection with the prosecution of the inquiry.

6. By reason of the foregoing facts, respondents were denied a full, fair, and open hearing in the reopened proceedings herein, contrary to the requirements of the Packers and Stockyards Act of 1921 and of the due process clause of the Fifth Amendment to the Constitution of the United States. The "Report and Recommendations of Examiner" issued January 17, 1939, should therefore be suppressed and a rehearing ordered.

Respectfully submitted.

(s) JOHN B. GAGE,
J. B. G.
(s) FREDERICK H. WOOD,
(s) THOMAS T. COOKE,
J. B. G.
*Counsel for Certain Respondents.*

FEBRUARY 15, 1939.

572 Exceptions to examiner's report and statement objecting to procedure and rulings of examiner filed February 16, 1939, by counsel for petitioners (to be transmitted as original document as per stipulation).

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, ET AL., RESPONDENTS

*Motion of respondents to suppress the report and recommendations of examiner dated January 17, 1939, and for a rehearing, and memorandum in support thereof.*

Respondents hereby move that the Secretary of Agriculture shall suppress the "Report and Recommendations of Examiner" issued herein on January 17, 1939, and shall grant a rehearing herein, together with such other relief as may be appropriate, and in support of such motion allege as follows:

1. That the findings and decision which the Secretary of Agriculture purported to make on June 14, 1933, and which were invalidated by the decision of the Supreme Court of the United States, were not set aside, as duly demanded by respondents, but, although based on the test year 1931, and made by the prosecutors for the Department were thus considered presumptively valid as applied to the period June 14, 1933, to November 1, 1937, wherein greatly changed conditions obtained.

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2. That the Trial Examiner, while pretending to reconsider the case, did not in fact do so, but adopted in substantially their full extent the findings in said decision of June 14, 1933, the findings as to reasonable rates being adopted by him without any deviation, although such rates were stated in odd cents per head and differed substantially from any rates theretofore in effect, or prescribed, thus carrying out the first step in the previously announced purpose of the Secretary of Agriculture to "validate" his order for the purpose of avoiding and frustrating the decision of the United States Supreme Court.

3. That the Trial Examiner, while purporting to act as an "impartial trier of the facts," was actually, throughout the reopened hearings, a member of the Solicitor's department, which, as stated by the Secretary of Agriculture in a letter to The New York Times, dated May 8, 1938, exercises the prosecuting functions of the Secretary of Agriculture, was a co-employee therein of the prosecuting attorney in the reopened proceedings, and collaborated with him in the preparation of the findings.

4. That the tentative findings and report present which purport to be the judicial conclusions of the Trial Examiner, whereas under the law he has no authority to draw judicial conclusions from the evidence but only to "sift and analyze" the evidence so as to present a fair report thereof.

574 5. That the Trial Examiner refused to make findings of fact upon undisputed evidence in the record which he had held to be relevant and material to the issues, and which was in fact so, although duly requested so to do by respondents, and that the failure and refusal of the Examiner so to do was unfair and prejudicial to respondents, in that no fair and complete report of the evidence was presented for the Secretary's consideration.

6. By reason of the foregoing facts, respondents were denied a full, fair, and open hearing in the reopened proceedings herein, contrary to the requirements of the Packers and Stockyards Act of 1921 and of the due process clause of the Fifth Amendment to the Constitution of the United States.

The "Report and Recommendations of Examiner" issued January 17, 1939, should therefore be suppressed and a rehearing ordered, which action respondents herewith request be taken.

In view of the fact that for the reasons above stated, no hearing can be properly held upon the exceptions to said "Report and Recommendations of Examiner" respondents hereby more, without waiving in any way their previous objections in respect of his disqualification to act at all in these proceedings, for oral argument before the Secretary of Agriculture upon this motion prior to any argument upon said exceptions, and request permission to file a brief in support of this motion.

Respectfully submitted.

(S) FREDERICK H. WOOD,
(S) JOHN B. GAGE,
(S) THOMAS T. COOKE,
*Counsel for Certain Respondents.*

FEBRUARY 17, 1939.

575 MARCH 1, 1939.

FREDERICK H. WOOD, Esq.,
*Cravath, De Gersdorff, Swaine and Wood,*
*15 Broad Street, New York City.*

DEAR MR. WOOD: Reference is made to the case of Secretary of Agriculture V. L. B. Andrews, et al., Respondents, Bureau of Animal Industry Docket No. 311. Your motion papers entitled "Motion of Respondents to Suppress the Report and Recommendations of Examiner dated January 17, 1939, and for a Rehearing, and Memorandum in Support Thereof," were delivered to this office by Mr. Hatch on February 18. Motion papers praying for similar relief and similarly entitled were filed by Mr. Gage on February 16 and an order disposing of that motion has been prepared.

In view of the fact that the questions raised by you in this motion are substantially set forth in your printed exceptions filed in this case entitled "Exceptions of Certain Respondents to Purported Report and Recommendations of Examiner and Statement Objecting to Procedure and Rulings of Examiner", and you will have an opportunity to argue these questions when oral argument is had before me on these exceptions, I feel that the present motion should not be entertained by me at this time.

Very truly yours,

(S) H. A. WALLACE,
*Secretary.*

cc:

JOHN B. GAGE, Esq.,
*c/o Gage, Hillix, Hodges and Cowherd,*
*Kansas City, Missouri.*

DOUGLAS L. HATCH, Esq.,
*Washington, D. C.*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

SECRETARY OF AGRICULTURE

*v.*

L. B. ANDREWS, ET AL.

*Order*

576 The respondents on February 16, 1939, filed a motion entitled Motion Of Respondents To Suppress The Report and Recommendations Of Examiner Dated January 17, 1939, And For a Rehearing.

The Secretary of Agriculture, upon examination of the motion papers and after giving full consideration to the motion and related matters, has determined and concluded that the motion to suppress the report and recommendations of examiner dated January 17, 1939, and for a rehearing, should be denied.

Now, therefore, the Secretary of Agriculture, having considered the motion made by the respondents,

It is ordered that the motion of respondents to suppress the report and recommendations of examiner dated January 17, 1939, and for a rehearing, be, and the same is, denied.

It is further ordered that a copy hereof shall be served upon the attorneys of record for the respondents by registered mail.

Done at Washington, D. C., this day of March 4, 1939. Witness my hand and the seal of the Department of Agriculture.

(S) H. A. WALLACE,
*Secretary of Agriculture.*

MARCH 15, 1939.

Re Secretary of Agriculture v. L. B. Andrews et al. B. A. I. Docket No. 311.

JOHN B. GAGE, Esq.,
*Bryant Building, Kansas City, Missouri.*

DEAR SIR: Upon consideration of your request for extended oral argument in the above-entitled proceeding, you are informed that, since there have been prior arguments in the case, it is believed that a total of three hours for all the attorneys should be ample for the presentation of the issues involved. The argument will be heard by me on March 29, 1939, between 10 a. m. and 1 p. m.

Very truly yours,

(S) H. A. WALLACE,
*Secretary.*

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A-14433.

LAW OFFICES

GAGE, HILLIX, HODGES & COWHERD

1007 BRYANT BUILDING, KANSAS CITY, MISSOURI

Victor 9852

MARCH 17, 1939.

Re Secretary of Agriculture v. L. B. Andrews, et al. B. A. I. Docket No. 311

H. A. WALLACE, Esq.,
*Secretary of Agriculture, Department of Agriculture,*
*Washington, D. C.*

DEAR SIR: I have your letter of March 15 advising me of the fact that a total of only three hours for all attorneys has been allowed for the presentation of arguments in the above entitled proceeding, and mentioning the fact that prior arguments had been had in the case.

The time allotted is, in my opinion, utterly inadequate. The issues involved could not be stated, much less argued or presented on the facts, in the allotted time. I appreciate the fact that you are very busy and that it is, indeed, a trespass on your time to be required to give necessary consideration to matters of this sort, but I feel in this particular instance it would be time well spent and from the standpoint of the persons involved, it is essential that a longer time should be devoted to the matter than that suggested. It is not only the immediate case that is important. Your understanding of the fundamental issues correctly may have a vital bearing upon the position of live stock producers in the relativity of their bargaining power as against that of the packers in respect to securing a fair share of the consumer's dollar paid for live stock products.

I appeal to you to grant adequate time that these matters may be properly presented and discussed.

Very truly yours,

(S) JOHN B. GAGE,
John B. Gage.

Received March 20, 1939.
Office of the Solicitor.

[Telegram]

OFFICE OF THE SOLICITOR,
*March 22, 1939.*

Packers and Stockyards Act.

HN B. GAGE, Esquire,
*Bryant Building, Kansas City, Missouri.*

Secretary will allow four hours for argument Morgan case, ginning 8:30 a. m.

MARTIN G. WHITE,
*Solicitor, Agriculture.*

BAI Docket No. 311

Copy to: FREDERICK H. WOOD, Esq., THOMAS T. COOKE, Esq., CHALLEN B. ELLIS, Esq., Dr. F. W. MILLER, Hearing Clerk.

AGRICULTURE TELEGRAPH OFFICE,
*1939 March 22 p. m. 3:50.*

Transcript of oral argument held at Washington, D. C., March 1939 (to be transmitted as original document as per stipulation).

Testimony of John A. Roberts introduced at a former hearing, gether with Exhibits (to be transmitted as original document as r stipulation).

Deposition of Henry A. Wallace taken at the second trial rein, together with Exhibits (to be transmitted as original cuments as per stipulation).

*Petitioners' Exhibit 1*

Order of Secretary of Agriculture, dated June 20, 1939 (attached exhibit to Motion for Order to Show Cause).

*Petitioners' Exhibit 2*

Petitioners' exception to examiner's report and recommendaons (to be transmitted as original document as per stipulation).

*Petitioners' Exhibit 3*

Report and Recommendations of Examiner (to be transmitted original document as per stipulation).

*Petitioners' Exhibit 4*

Rules and Regulations of Proceedings before Secretary of Agriculture Under Packers and Stock Yards Act (to be transmitted as original document as per stipulation).

*Petitioners' Exhibit 5*

Clipping from New York Times, May 8, 1938 (to be transmitted as original document as per stipulation).

*Petitioners' Exhibit 6*

CRAVATH, DE GERSDORFF, SWAINE & WOOD,
15 BROAD STREET,
*New York, New York, April 1, 1939.*

In re Docket No. 311, Packers and Stock Yards Act

Transportation Building, Washington, D. C.

Dear MR. SECRETARY:

In the course of the oral argument before you in the above matter you made inquiry as to whether or not the present rules of procedure promulgated by you, relating to the administration of the Packers and Stock Yards Act, were objectionable in any respect to respondents in this proceeding. My reply, I believe, was to the effect that such rules as now promulgated were not, in my judgment, subject to general objection but that as applicable to this particular proceeding by reason of the utilization of the invalid order of June 14, 1933, as a tentative order and the progress of the proceeding under the former rules unfairness would necessarily result therefrom.

580

The answer as made was predicated upon the assumption that under the present rules all communications subsequent to the oral argument having to do with the application of the evidence to the determination of the issues of this proceeding between yourself and employees of the Department, including the Examiner, who have heretofore participated in the proceeding, shall be made known to the respondents or to myself as their attorney. The Examiner was, during the hearing of evidence in this case, a member of the Solicitors' Department and it is to his "Report and Recommendations" that the Exceptions are addressed. Under all of the circumstances of this proceeding this is peculiarly essential in enabling you to reach fair, impartial, and accurate conclusions and judgments upon the merits of the exceptions presented. We have no desire to limit in any way your access

to or consultation with these persons but do demand the right and opportunity to refute or explain, should it be necessary, any statements made to you concerning the record in the case. As I advised you at the conclusion of the argument, I will hold myself in readiness at all times to meet your convenience in connection with any further discussions of the evidence or the issues before you should you deem such discussion desirable.

Very respectfully,

(S) JOHN B. GAGE,
*Attorney for Respondents.*

HENRY A. WALLACE, Esq.,
*Secretary of Agriculture, Washington, D. C.*

Copy to: G. N. Dagger, Esq., Assistant Solicitor, 2216 South Building, Department of Agriculture, Washington, D. C.

*Petitioners' Exhibit 7*

APR. 14, 1939.

JOHN B. GAGE, Esq.
*1007 Bryant Building, Kansas City, Missouri.*

DEAR MR. GAGE:

Receipt is acknowledged of your letter dated April 1, 1939,
581 relative to the Kansas City Commission Rate Case, B. A. I. Docket 311. You make particular reference to the rules of procedure under the Packers and Stockyards Act, concerning which there was some discussion during the oral argument on March 29, 1939. You state that your answer to the effect that the respondents have no objection to the existing rules of procedure "was predicated upon the assumption that under the present rules all communications subsequent to the oral argument having to do with the application of the evidence to the determination of the issues of this proceeding between yourself and employees of the Department, including the Examiner, who have heretofore participated in the proceeding, shall be made known to the respondents or to myself as their attorney." You also state that you will hold yourself in readiness at all times to participate in further discussions of the case.

In the case of Morgan v. United States, 298 U. S. 468, the Supreme Court, in connection with its ruling that "The one who decides must hear," said:

"This necessary rule does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. * * *." (481)

It is my purpose to follow the rule announced in the foregoing quotation in reviewing the record and making my decision in the instant case.

Your offer to appear and discuss the case further is appreciated, and if I find it necessary, I shall be glad to avail myself of the privilege.

Very truly yours,

(S) H. A. WALLACE,
*Secretary.*

*Petitioners' Exhibit 8*

Wade H. Ellis, Challen B. Ellis, Woodson P. Houghton, Evert L. Bono, Kahl K. Spriggs. Cable Address "Elhafis."

LAW OFFICES, ELLIS, HOUGHTON & ELLIS,
SOUTHERN BUILDING,
*Washington, March 31, 1939.*

In re Docket No. 311. Packers and Stockyards

Honorable HENRY A. WALLACE,
*Secretary of Agriculture, Washington, D. C.*

582 DEAR MR. SECRETARY: In the oral argument before you in the above matter, the Government counsel, G. N. Dagger, Esquire, presented a compilation entitled "Index of Monthly Receipts in 1931 of Cattle and Calves at the Kansas City Stockyards and Index by Months of the Number of Employee and Owner Cattle and Calf Salesmen for the Same Period." As this exhibit was based on some old work sheets of Government accountants and, insofar as the index number of salesmen was concerned, the information it contained was not incorporated in the formally introduced cost studies of the Government accountants, we were unable to supply at the time the necessary explanatory information. Inasmuch as it apparently disclosed that the number of salesmen was greater during the slack months of January to July, inclusive, than during the months of heavy receipts from August to November, inclusive, there was evidently a mystery that needed explanation. Since the argument, with the assistance of the accountant of the Department who prepared the exhibit, we have gone over the accountant's work sheets. They developed the fact that the decline in the number of salesmen occurring in 1931 was due to two agencies going out of business during the slack period of the year and the death of two salesmen during the month of March, who were not replaced.

With this correction, the tabulation would show the reverse of the trend indicated on the exhibit.

Having in mind the contentions that salesmen must be employed on a year round basis and that the number of agencies was diminishing during this period, the exhibit as thus explained does not in my judgment tend in any way to refute or impair these two contentions.

Very respectfully,

(S) JOHN B. GAGE.

Copy to: G. N. Dagger, Esquire.

583 *Petitioners' Exhibit 9*

APRIL 5, 1939.

Honorable HENRY A. WALLACE,
*Secretary of Agriculture, Washington, D. C.*

In Re Secretary of Agriculture v. L. B. Andrews et al., B. A. I. Docket No. 311

DEAR MR. SECRETARY: During the course of the oral argument in the above-entitled case on March 29, 1939, I made reference to the statement in Appendix C to the respondents' brief filed in the Supreme Court reading as follows: "In practically all instances these extra salesmen worked during the period of peak receipts." In that connection I presented a compilation showing by index numbers the relative number of cattle and calf salesmen working on the Kansas City Market each month in 1931. You questioned counsel in regard to the reasons for the variations disclosed by the index figures.

Mr. Gage has kindly furnished me a copy of a letter dated March 31, 1939, addressed to you, in which he makes further explanations after his examination of the work papers (Government Exhibit 114–1A to 114–107A). He says: "They [the work papers] developed the fact that the decline in the number of salesmen occurring in 1931 was due to two agencies going out of business during the slack period of the year and the death of two salesmen during the month of March, who were not replaced." The reasons given by him as to why more cattle salesmen were working at the light season than at the heavy season, in part, confirm those suggested at the time of the argument.

The number of cattle and calf salesmen working each month in 1931 and the index numbers based thereon are as follows:

| Months | Number of salesmen | Index numbers (Jan. 1931=100) |
|---|---|---|
| January | 166 | 100.00 |
| February | 166 | 100.00 |
| March | 166 | 100.00 |
| April | 160½ | 96.69 |
| 584 May | 159 | 95.78 |
| June | 158 | 95.18 |
| July | 159 | 95.78 |
| August | 155½ | 93.67 |
| September | 155½ | 93.67 |
| October | 155½ | 93.67 |
| November | 155½ | 93.67 |
| December | 155½ | 93.67 |

Mr. Gage refers to the fact that two firms went out of business during the first three months of the year and also states that two salesmen died after the first three months. He then states: "With this correction, the tabulation would show the reverse of the trend indicated on the exhibit." In preparing the index figures which I submitted, each salesman was included for each month during which he worked. There is, therefore, no correction to be made.

Respectfully yours,

(s) G. N. DAGGER, *Attorney.*

Copy to John B. Gage, Esq.

585 *Petitioners' Exhibit 10*

MAY 4, 1939.

MEMORANDUM FOR THE SECRETARY

Re The Kansas City Commission Rate Case, B. A. I. Docket No. 311

DEAR MR. SECRETARY: The following is a summary of the exceptions filed by counsel for certain respondents to the examiner's report:

GENERAL EXCEPTIONS

Exceptions 1 to 7:

1. The matters involved in this proceeding are moot.

2. The findings contained on pages 14 to 89 of the mimeographed copy of the examiner's report do not constitute findings of evidentiary fact but they mingle such findings with conclusions of ultimate fact and opinions not based on any evidence.

3. The examiner was not an impartial arbiter and merely copied an invalid order.

4. The examiner purported to make judicial conclusions beyond his authority.

5. The examiner's report is against the weight of the evidence.

6. The examiner incorporated in his report certain findings suggested by counsel for the Government.

7. The examiner misinterpreted the decisions of the courts.

586 SPECIAL EXCEPTIONS

## I. Proposed Findings Upon Evidence Presented Prior to June 2, 1938

Exceptions 1 to 9:

1. The examiner who heard the evidence in the first and second hearings did not thereafter serve upon the respondents tentative findings of fact, conclusions, and order. Argument before the Secretary personally was denied.

2. Respondents propose detailed findings of fact with respect to the procedure followed in the preparation of the order of June 14, 1933. They also propose that findings be made to the effect that a new schedule of rates became effective on November 1, 1937. They propose findings with respect to the number of market agencies engaged in business at Kansas City on various dates, beginning with the year 1925.

3. Respondents propose a finding to the effect that it had been the custom to establish rates on the basis of approximately 2 percent of the gross proceeds, that in the year 1929 the percentage was 85/100 of 1 percent, and that this percentage is less than that for the commission charges on a number of enumerated farm products.

4. This proposed finding covers the subject of the fluctuation in the receipts of livestock at the Kansas City market and the reasons therefor and effect upon the operations of the respondents.

5. This proposed finding contains a statement to the effect that salesmen must make frequent trips to the country in order to ascertain facts with respect to the conditions under which livestock is produced in order that they may be able to appraise the value of livestock and bargain effectively with packer-buyers.

6. Respondents propose a finding with respect to the details of the arbitration proceedings in 1922 and the extent to which the tariff of May 23, 1932 (Tariff No. 3), effected a reduction
587 of revenues producible by Tariff No. 2 filed as a result of the arbitration proceedings.

7. Respondents propose a finding with respect to the effect on revenues and on salaries paid of the decline in volume of business between the years 1929 and 1931.

8. Respondents propose a finding that the evidence does not show that any market agency failed to handle its business in a reasonably efficient manner, and sets out the volume of business in terms of gross proceeds handled by a number of individual firms.

9. In this proposed finding, it is stated that salesmen must match the bargaining ability of packer-buyers; that anything which would curtail that ability of the salesmen would be a detriment to the producer of livestock; and that the cost actually incurred by firms handling a large volume should be given the greatest consideration in determining the reasonableness of rates.

## II. Proposed Findings Upon Evidence Presented Subsequent to June 2, 1938

Exceptions 10 and 11:

10. The respondents propose under this finding the following:

(a) Relative prices of the different species of livestock over a period of years.

(b) Change in the cost of living.

(c) A comparative revenue headage of the receipts of livestock at the Kansas City market over a period of years.

(d) Comparative livestock population in territory tributary to the Kansas City market.

(e) Comparison of truck-ins and rail receipts at the Kansas City market over a period of years.

(f) Disposition of livestock at the Kansas City market over a period of years.

(g) The development of auction markets in competition with the Kansas City market.

588 11. Under this finding, the respondents propose findings with respect to the following:

(a) Change in the number of market agencies since 1931.

(b) The effect of the impounding upon the market agencies at the Kansas City market.

(c) The market agencies were not able to operate efficiently between 1933 and 1937 because the impounding made it necessary to pay unreasonably low salaries.

(d) Reduction in the number of yardmen, and their efficiency during the impounding period.

(e) Unreasonably low wages paid employees, resulting in lower efficiency during the impounding period.

(f) Reduction in the amount expended for advertising and telephone and telegraph expenses resulted in a decline of volume of business at the Kansas City market.

(g) The two cooperative market agencies withdrew funds deposited with the Market Practice Committee during the impounding period, they having accepted the rates prescribed in the Secretary's order of June 14, 1933.

(h) The expenses incurred by the respondents on account of this proceeding.

(i) Comparative salaries and wages earned by owners and employees in 1931 and 1937.

III. Proposed Findings of Fact and Conclusions Offered in Substitution for Paragraphs 131 to 180, Inclusive, of the Examiner's Report

Exceptions 12 to 31:

12. Respondents propose a finding as a substitute for paragraph 131 of the examiner's report wherein the method for determining reasonable unit costs is stated. They propose that the experienced aggregate species cost based upon expenses
589 actually incurred by certain firms with large volume of business be accepted as the guide.

13 to 18. These proposed findings set up an analysis of the actual expenses as ascertained by the Government accountant, the aggregate unit cost by species for each firm, and the same information for groups of 23, 11, and 3 separately designated firms.

19 to 24. The respondents propose a finding that each of the firms in the groups of 11, 23, and 3 agencies, respectively, handled its business efficiently, and that its experienced costs were reasonably necessary.

25. This proposed finding contains a table of the average performance for cattle and calf salesmen, as computed by the respondents for the year 1931.

26. This finding suggests that the gross proceeds and selling results realized by the group of 3 firms can be compared with all firms by reference to respondents' exhibit 247.

27 and 28. Respondents propose that the experienced costs of the two exclusive sheep firms should be given particular consideration, and that the sheep experience of John Clay & Company should be considered in light of the fact that a yardman helped the salesmen in the selling of sheep.

29. Respondents propose in this finding that the agencies in the groups of 11, 23, and 3 firms, respectively, do not employ any more salesmen than necessary and did not pay unreasonable salaries.

30 and 31. In these findings, it is suggested that unit costs as to certain firms may appear unduly low or high because of some

particular circumstance, and that the agencies in the group of 3 firms operated at lower costs than other firms on that account.

590 SPECIFIC EXCEPTIONS

Respondents except to a number of paragraphs of the examiner's report.

32. Exception is taken to paragraphs 18 to 20 because the statistical information underlying them is eliminated, and to paragraph 20 (a) because the respondents contend that it contains an inaccurate statement.

33. Exception is taken to that part of paragraph 28 which states that the increased cost resulting from the change in the modes of arrival of livestock have been reflected in the unit costs set up in the report. Respondents also except to paragraph 29 (a), which states that the tariff of May 23, 1932, and the one proposed automatically adjusts itself to these changing conditions.

34. Exception is taken to paragraph 47 wherein finding is made to the effect that the stockyard company maintains "a force of employees in the country" who act as solicitors.

35. Exception is taken to paragraph 48 regarding the finding as to the scope of the activities of the Bureau of Agricultural Economics in disseminating market news.

36 and 37. Exception is taken to paragraphs 49 and 50 because they do not contain complete statistics relative to the disposition of livestock and to the direct receipts by packers.

38. Exception is taken to paragraph 51 on the ground that it does not fully set out the history of the rates during the early years of the market.

39. Exception is taken to paragraph 65 on the ground that the services of salesmen are not set out in more detail.

40. Exception is taken to paragraph 79 because it does not show the fluctuations in receipts of livestock.

591 41. Exception is taken to paragraph 83 because it does not contain a finding as to the origin of respondents' rates and as to the reduction made by the Tariff No. 3, effective May 23, 1932.

42 and 43. Exception is taken to paragraphs 92 and 93 because they do not state the main purpose of the trips made by salesmen to the country. They claim that they make trips to the country not only for soliciting business but for the purpose of informing themselves and becoming acquainted first hand with the conditions under which livestock is fed in order that they may more effectively bargain with packer-buyers. They also claim that they

render a definite service to the producer in appraising his livestock before shipment.

44. Exception is taken to paragraph 112 because it fails to make a finding with respect to the percentage reduction in revenue resulting from Tariff No. 3 filed in May 1932.

45. Exception is taken to paragraph 113 because it is claimed that it is misleading and inaccurate, does not show the difference in the salaries paid in 1929 and 1931, and does not show the effect of Tariff No. 3 and of the impounding upon salaries paid subsequent to 1931.

46 and 47. Exception is taken to paragraphs 114 and 115 on the ground that the examiner has not followed the principles of the Omaha commission rate case.

48. Exception is taken to paragraph 116 on the ground that it does not show the increase in the truck shipments from 1931 to 1937, and does not contain an analysis of the costs incident to the handling of truck receipts.

49. Exception is taken to paragraph 117 because it does not show the fluctuations in receipts.

592 50. Exception is taken to paragraph 119 because the examiner failed to show that the number of firms had decreased from 60 to 40, and because he failed to analyze the evidence relating to the actualities of the period covered by the rates to be prescribed.

51. Exception is taken to paragraphs 126 to 128 because no allowance was made for the cost of establishing the business or for good will.

52. Exception is taken to paragraph 129 on the ground that it fails to set forth any evidentiary facts supporting the finding that there are more firms on the Kansas City market than necessary.

53. Exception is taken to paragraph 130 (setting forth the reasons for adopting a given procedure for determining the reasonableness of rates) because the conclusions stated are not supported by evidentiary facts.

54. Exception is taken to paragraph 131 (findings with respect to the classes of expenses and the effect of comparative conditions thereon) because the finding is not that of an evidentiary fact and because it departs from the principles adopted in the Omaha commission rate case.

55. Exception is taken to paragraph 131–a (finding with respect to the necessity of recasting the unit costs shown by the Government accountant) on the ground that it denies to the respondents a fair and impartial consideration of the evidence.

56 to 65. Exceptions are taken to paragraphs 134, 135, 137-140–b, 142, and 143 wherein the examiner makes findings with respect to the reasonable unit costs of salesmanship.

66 and 67. Exceptions are taken to paragraphs 144 and 146 (findings with respect to yarding salaries and office salaries) because the unit costs stated are not the same as those contained in the cost study of the Government accountant.

593 68. Exception is taken to paragraph 148 (finding as to the reasonable unit cost of business getting and maintenance) on the ground that the amounts found are unreasonably low, it being contended that some expenses were not included, and the amounts actually expended were ignored.

69. Exception is taken to paragraph 149 (finding of reasonable unit costs for administrative and general expenses) because no allowance was made for social security taxes and for the expenses of this proceeding.

70. Exception is taken to paragraphs 150 to 154 (findings on reasonable unit costs of insurance) on the ground that no allowance was made for public liability insurance.

71. Exception is taken to paragraphs 159 to 162 (findings as to the reasonable allowances for profits) because they are not a fair analysis of the evidence and do not consider the expenses of this proceeding.

72. Exception is taken to paragraph 163, which is the summary of the reasonable unit costs to which specific exceptions have already been taken.

73. Exception is taken to paragraph 163–a (estimate of the spread between reasonable unit costs and the per head revenues which would be produced by the rates proposed) on the ground that it is contrary to the evidence.

74. Exception is taken to paragraph 164 (finding of comparative expenses between the years 1929 and 1931) on the ground that the statements made are false and inaccurate.

75. Exception is taken to paragraphs 165 to 168 (findings as to buying costs) on the ground that the statement with respect to the relative buying and selling performance is inaccurate.

594 76. Exception is taken to paragraph 176 on the ground that the second hearing is referred to as the last hearing.

77. Exception is taken to paragraph 179 (finding that the rates under investigation are unreasonable) on the ground that it is not supported by substantial evidence.

78. Exception is taken to paragraph 180 (prescribing reasonable rates) on the ground that the prescribed rates are without support in the evidence and on the further ground that they would yield revenues in inadequate amounts specifically set out as to certain firms.

79. Exception is taken to the form of the order on the ground that the Secretary is without jurisdiction.

80. Respondents request that all findings covered by exceptions 32 to 79, inclusive, be found to be against the weight of the evidence and unsupported by substantial evidence.

FINDINGS REQUESTED OF THE SECRETARY ADDRESSED TO THE EXAMINER'S REPORT

81. The actual number of livestock sold on the average of salesmen of the large volume agencies constitutes reasonable performance.

82 to 84. The findings of the examiner as to the reasonable salesmanship volume are unreasonable.

85. The unit cost found by the examiner as to selling and buying costs relating to salesmanship are unreasonably low.

86 to 91. The selling charges proposed for each species are unreasonably low as applied to a group of 11 respondents, a group of 23 respondents, and to each of 3 specifically named respondents who obtained prices for cattle among the highest realized in 1931.

92. Most of the services rendered by the respondents in inspecting and appraising livestock constitute auxiliary selling service of considerable assistance to cattle raisers.

595 93. The allowance of 10 percent of reasonable costs and profit for business getting and maintaining is arbitrary and has no foundation in the evidence.

94 and 95. Findings 144 to 146 purporting to set forth the per head results obtained by the Government cost study in allocating yarding salaries and office salaries direct to species do not do so.

Respondents make objections to certain rulings of the examiner as set forth on pages 73 to 84 of the exceptions.

Respectfully,

JOHN C. BROOKE, *Examiner.*

596 *Petitioners' Exhibit 11*

UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF ANIMAL INDUSTRY,
*Washington, D. C., June 13, 1939.*

MEMORANDUM FOR THE SECRETARY

DEAR MR. SECRETARY: We have read the proposed order in Docket 311, the Kansas City Commission rate case. I am not fully informed as to all the background in this long contested case. In reading the proposed order certain questions have oc-

curred to us which we submit for consideration and without recommendation as to the action to be taken.

This case has been carried to the Supreme Court twice. The proposed order does not modify the rates set out in your order of June 14, 1933. We know of no reason to assume that the respondents will not again carry the case to the Supreme Court. The reasonableness of the rates, while upheld by the lower court, has never been passed on by the Supreme Court. If the case goes to the Supreme Court again for decision as to whether the rates are reasonable, it occurs to us that the structure of the rates in your order of June 14, 1933, and in the proposed order, may be open to criticism in certain particulars. I understand, however, that in previous rate cases where the rate structure has been attacked the Court, in its ruling, has either ignored the attack or upheld the Secretary. The Court may follow the same course in this case. Nevertheless, we believe the rate for so-called yearling cattle should be brought to your attention.

At the time your order of June 14, 1933, was issued indications were that the rates, when applied to estimated receipts, would produce total revenues in excess of reasonable costs. However, the reduction made in the rates by that order as compared with the rates in Tariff No. 3 filed May 23, 1932, was most pronounced in the rates applying to yearling cattle. This appears to us to be the vulnerable point in the rate structure.

The definition for yearling cattle in the order describes them as cattle weighing between 400 and 800 pounds. Cattle of this class make up a large proportion of cattle received in the Kansas City market as the majority of stocker and feeder cattle and much of the baby beef produced in the Kansas City area fall within this weight classification. Consequently, while the total revenues estimated to be produced by the rates prescribed in the order of June 14, 1933, may have been reasonable in relation to reasonable costs, the distribution of those revenues may not be considered to be equitable because the rate on yearling cattle may have carried more than its proportionate share of the reduction ordered. If this is the case, might it not be considered as discrimination against commission firms whose business is largely confined to handling cattle that classify as yearlings under the rate order? The attached table shows the reduction made in selling commission rates for all classes of cattle and calves.

597 Tariff No. 4, accepted for filing on November 1, 1937, which modified the order of June 14, 1933, was the result of a stipulation entered into with the commission firms. While it was agreed that acceptance of Tariff No. 4 should be without prejudice to the proceedings in connection with the order of June 14, 1933, may it not be successfully argued that in arriving

at rates to be prescribed in the proposed order some consideration should be given to the reasons underlying acceptance of Tariff No. 4? The modification of the order as set out in Tariff No. 4 was based on a showing as to changes in costs occurring subsequent to the order of June 14, 1933. The most important differences between the rates prescribed by the June 14, 1933, order and Tariff No. 4 are increases in the rates for yearling cattle and a lowering of the upper weight limit for this class to 700 pounds. These changes brought the rates to as high or, in some cases, a slightly higher level than those set out by Tariff No. 3 filed May 23, 1932.

May it not be successfully argued that the conditions which prompted the modification on November 1, 1937, of the June 14, 1933, rates and the acceptance of Tariff No. 4 for filing did not suddenly come into being on November 1, 1937? It is reasonable to assume that they had obtained for some time prior to that date. Might the Court be persuaded that the changes in the cattle tariff made in the modification order of November 1, 1937, are prima facie recognition of the June 14, 1933 rates—the rates which would be confirmed by the proposed order—were not reasonable for the entire period during which the funds were impounded?

We do not find in the proposed order any justification for the relatively severe reduction in the rate for yearling cattle. Without specific justification after having accepted the increases in Tariff No. 4 may the Department be subject to criticism for having acted in an arbitrary manner? We merely raise the question for consideration.

The Department is in a unique position with regard to Docket 311. Heretofore it has been possible to determine the reasonableness of rates ordered by the Secretary only by applying them to estimated receipts of livestock. As a result of long drawn out controversy and litigation, the Department now has access to data showing actual receipts for the period under which the rates in the proposed order will apply. It is now possible, as it has never been before, to determine just and reasonable rates and to prove them to be such beyond question. Is it the duty in such circumstances for the Department to make that determination, particularly with respect to the rates to be prescribed for yearling cattle? In effect, such a determination must have been made as a basis for the modification of November 1, 1937. Such a determination, based on actual data now available, would delay the issuance of an order in this case. If the study showed the rates for the period June 14, 1933, to November 1, 1937, were not reasonable when measured by actual experience during that period or any part of it, and different rates are now pre-

scribed recalculations of applicable transactions would have to be made by the commission men before impounded funds could be distributed. Any modification at this time of the June 14, 1933, order might be widely heralded as an admission of error on the part of the Department. These are important considerations.

There is also attached a memorandum by Mr. Cooper.

Sincerely,

C. W. KITCHEN,
*Associate Chief of Bureau.*

598 *Petitioners' exhibit 12*

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
*Washington, D. C., May 31, 1939.*

MEMORANDUM FOR THE SECRETARY

In re L. B. Andrews, et al.

DEAR MR. SECRETARY: Attached is an order in this case drafted in accordance with your instructions to me and in accordance with the decision reached by you.

At one of the conferences with you, that on May 6, 1939, you stated to me that you desire to give full consideration to the additional expenses incident to the taxes chargeable under the Social Security Act, and to the expenses incident to the conduct of the administrative hearings in this case. You directed also that I ascertain as nearly as possible the amount of these expenses incurred between July 23, 1933, and November 1, 1937, the period during which the rates now under investigation were charged by the respondents.

The Social Security Act became effective on January 1, 1936. The unemployment insurance began to accrue as of this date. The provisions of the act relative to old age pension taxes went into effect on January 1, 1937. Throughout 1936, the unemployment insurance tax was 1 percent of the employee payroll of all concerns which had eight or more employees at any one time during the calendar year. The tax rate increased to 2 percent beginning January 1, 1937. The old age tax for 1937 was 1 percent of the employee payroll for all employers with one employee or more. It is not possible to ascertain from the record the exact amount of Social Security taxes paid by the respondents here. In order that an adequate amount may be covered into the rates these taxes have been computed for all market agencies on the Kansas City market, including the cooperative

associations not respondents here, and as if all these agencies were taxable under the law. The total amount of the taxes so computed for the period during which they were in effect between July 23, 1933, and November 1, 1937, is approximately $20,000. This amount spread over the four-year period, the approximate duration of the rates, is $5,000 a year.

You also decided that the expenses to the respondents incident to the administrative hearings should be considered as costs payable out of revenues collectible under the reasonable rates and that these costs should be amortized over a period of ten years. The respondents state that the total costs of the administrative hearings and the litigation in the courts have been in excess of $165,000. They do not allocate this amount as between the costs of the administrative hearings and the costs of the court proceedings. Inasmuch as the case has been before the District Court three times and the Supreme Court of the United
598½ States four times, it is reasonable to suppose that at least one-half of the $165,000, or $82,500, has been incurred on account of litigation in the courts. If the other $82,500 be considered as costs of the administrative hearings and if this amount be amortized over a period of ten years the annual expense to be covered into the rates is approximately $8,250. The sum of the $5,000 and the $8,250, or $13,250, represents a sum deductible from the revenues producible by reasonable rates. This amount is too indefinite to be used in the computation of reasonable per head costs as summarized in paragraph 163. This does not mean, however, that this amount has not been provided for in the rates. The spread between the total reasonable cost to the respondents based upon the per head cost shown in paragraph 163 and the amount of the revenues producible under the rates is $100,923.57. If from this spread there be deducted the $13,250 shown above, the spread between the cost so computed and the revenues is $87,673.57.

I am sending herewith the entire record in this case.

Respectfully yours,

JOHN C. BROOKE, *Examiner.*

(Enclosure.)

599 *Petitioners' exhibit 13*

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
*Washington, D. C., June 17, 1939.*

MEMORANDUM FOR SECRETARY WALLACE

DEAR MR. SECRETARY: The draft of the proposed order in Docket B. A. I. 311, the Kansas City Commission Rate Case, with a memorandum from Mr. C. W. Kitchen, has just been returned to me.

As indicated in my memorandum of May 31, an attempt was made to follow your instructions in drafting the order.

Mr. Kitchen apparently raises the question whether the rates prescribed for yearlings may not be too low. In a tentative draft of an order submitted to you on May 24, 1933, the rates suggested for yearlings (cattle from 400 to 800 pounds) were as follows: one head, 80 cents; one to twenty head, 40 cents; each head over twenty, 20 cents. On June 2, 1933, Dr. Mohler suggested the following rates: one head, 80 cents; one to twenty head, 50 cents; each head over twenty, 25 cents.

In your own handwriting you changed the 50-cent rate recommended by Dr. Mohler to 45 cents (see attached photostat copy of exhibit E, filed at the time interrogatories were addressed to you). This rate of 45 cents is retained in the attached draft of an order prepared by the undersigned as examiner.

Another question raised by Mr. Kitchen's memorandum is as follows: "Might the Court be persuaded that the changes in the cattle tariff made in the modification order of November 1, 1937, are prima facie recognition of the June 14, 1933, rates—the rates which would be confirmed by the proposed order—were not reasonable for the entire period during which the funds were impounded?" In connection with the increase in rates granted by you, effective November 1, 1937, Mr. John B. Gage agreed, "This stipulation shall not be considered in evidence or a part of the record, or be used by any of the parties to such actions for the purpose of affecting in any way the final determination of the issues presented by such litigation."

It seems to me that the rates prescribed for *h*earlings, as well as all other rates in the proposed order, which has been drafted according to your instructions, as I understand them, are reasonable.

Respectfully yours,

JOHN C. BROOKE, *Examiner.*

Attachments.

600 *Petitioners' Exhibit 14*

Memorandum

BUREAU OF ANIMAL INDUSTRY

Ftp–761

JUNE 5, 1939.

MR. KITCHEN: There is transmitted herewith a proposed order of the Secretary in Docket No. 311, which prescribes reasonable rates for the services of market agencies at the Kansas City market.

I have gone over this order carefully and I am of the opinion that the evidence in the record is such that this order as now prepared can be sustained if attack is made on it in the courts. In considering this order it should be remembered that it will apply to rates charged from July 23, 1933, to November 1, 1937, and that the basic data on which the order is issued covered the business of the firms for 1929 and 1931. The information in the record which was introduced in the 1938 hearings is very general in character.

In analyzing the findings as made I have no particular criticism except that I am of the opinion that the salesmanship performance as found for cattle and calves, hogs, and sheep is higher than I would have found on the basis of the same evidence. At the same time I think the examiner would have been warranted on the basis of the evidence in associating somewhat lower salaries than those which have been used with a lower performance, so that the resulting cost per unit of salesmanship might not have been materially affected.

I have initialed the proposed copy of the order even though I feel it is subject to criticism with respect to the item mentioned.

M. O. COOPER.

(Attachment.)

601 *Petitioners' Exhibit 15*

SELLING COMMISSION RATES FOR CATTLE AND CALVES AT KANSAS CITY, MISSOURI

| | Tariff 3 May 23, 1932 | | Secretary's order | Tariff 4, Nov. 1, 1937 |
|---|---|---|---|---|
| | Rail | Truck | All arrivals | All arrivals |
| Calves (under 400 lbs.): | *Cents* | *Cents* | *Cents* | *Cents* |
| Single head | | 40 | 40 | 40 |
| 1–20 head | 30 | | 25 | |
| 2–20 head | | 30 | | |
| Over 20 head | 25 | 25 | 15 | |
| 1–15 head | | | | 30 |
| 16–30 head | | | | 20 |
| 31–60 head | | | | 15 |
| 61 head, and over | | | | 10 |
| Yearlings (400–800 lbs.): | | | | |
| Single head | | 80 | 80 | |
| 1–20 head | 60 | | 45 | |
| 2–20 head | | 65 | | |
| Over 20 head | 40 | 45 | 25 | |
| Yearlings (400–700 lbs.): | | | | |
| Single head | | | | 70 |
| 1–15 head | | | | 60 |
| 16–30 head | | | | 45 |
| 31–60 head | | | | 35 |
| 61 head, and over | | | | 25 |
| Cattle (800 lbs. and over): | | | | |
| Single head | | 80 | 80 | |
| 1–20 head | 70 | | 70 | |
| 2–20 head | | 70 | | |
| Over 20 head | 60 | 60 | 50 | |
| Cattle (700–1,000 lbs.): | | | | |
| Single head | | | | 80 |
| 1–15 head | | | | 70 |
| 16–30 head | | | | 55 |
| 31–60 head | | | | 45 |
| 61 head, and over | | | | 35 |
| Cattle (1,000 lbs. and over): | | | | |
| Single head | | | | 85 |
| 1–15 head | | | | 75 |
| 16–30 head | | | | 65 |
| 31–60 head | | | | 55 |
| 61 head, and over | | | | 45 |

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